THE ELEMENTS

OF THE

DUTIES AND RIGHTS OF CITIZENSHIP.

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THE ELEMENTS

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DUTIES AND RIGHTS OF CITIZENSHIP.

BY

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PREFACE.

THIS book is intended primarily to meet the requirements of the Teachers' Preliminary Certificate examination. The author's endeavour has been to set down in plain outline the position held by a citizen as such in the English polity. It has been thought advisable to devote the first four Chapters to an account of the general principles of the law as they affect individual citizens; while the remaining Chapters are occupied with a brief sketch of the framework of English institutions, without which "descriptive part" the book could not be complete.

For the very elementary purposes of this treatise the following works have been used as authorities: Dicey, *Law of the Constitution*; Anson, *Law and Custom of the Constitution*: Blake Odgers, *Local Government*: Redlich and Hirst, *Local Government in England*: Barlow and Macan, *The Education Act, 1902*. Occasional reference has also been made to other standard works. The author's thanks are due to Mr. G. B. Davies, B.A., of Downing College, Cambridge, who has ably supplemented his inadequate knowledge of military affairs.

W. D. A.

March, 1906.

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DUTIES AND RIGHTS OF CITIZENSHIP.

CHAPTER I.

THE NATURE OF CITIZENSHIP.

§ 1. **The Nation and the State.**—A nation or people may be defined as a large number of human beings bound together by similarity of language, customs, and opinions, and often holding a tradition of a common ancestry. Such a body is not necessarily political: thus the natives of Ireland form a separate nation, but not a separate political community. A political community is a community organised as a whole for protection against foreign foes, and for the regulation of the internal relations of its own members in the interests of peace and order. The type of political community to which all modern countries conform is known as a State.

The marks of an independent State of the present day are: (1) it is permanently established, and is organised for purposes of government; (2) it possesses a definite territory; (3) it is independent of external control; and (4) it is in enjoyment of a certain amount of civilisation. A State may be co-extensive with one nation, as in the case of France, or may embrace several nations, as in the case of Austria. The Jews and the Poles are found in several States.

§ 2. **The Citizen.**—A citizen is a member of a political community. When the term is used strictly it denotes a *subject* of a State, as distinguished from a resident. But in its ordinary use it denotes simply a member of a political community, no attempt being made to distinguish the exact nature of the binding tie.

We say "political community" and not "State," because, though a citizen is in fact always a member of a State, yet the term "citizen" does not necessarily bring under consideration his position in the State—it may be used to denote his membership of some smaller political community, such as a province or town within the State. In addition to his duties and rights as an English subject, a typical English citizen will have duties and rights as a burgess. He will have a voice in the management of county affairs, in the election of guardians of the poor. And so far as his own personal life is concerned, the good administration of the affairs of his locality may be a matter of greater moment to him than the good government of the realm.

§ 3. **The Principles of Legislation.**—Wherever there is a political society there must be rules imposed by the community as a whole upon the members as individuals, for the object of preserving peace and maintaining the security of private life. And the more highly civilised the society the more complex such rules will be.

The essential duty of the State is to secure for each member freedom from interference on the part of others, thus enabling him to follow out his own lines of action as shall seem to him best. Accordingly, in the main it is left to the individual citizen to take active care for his own interests.

But modern legislation has gone further than is required by this idea of government. By means of

Factory Acts, Education Acts, and the like, the State has intervened to *make* people look after their own interests in certain directions: it has in this way taken upon itself to exercise a paternal supervision over the well-being of the people. Parents are now compelled to send their children to school; and the Factory Acts prohibit the employment of children under a certain age, even with the consent of their parents. Moreover, Acts like the Workmen's Compensation Act, 1897, and the Agricultural Holdings Act, 1893, contain clauses restricting the freedom of persons benefited to enter into agreements not to take advantage of the provisions of these statutes.

This paternal legislation tends to increase. And in another way modern States are doing more than is required by the essential duty of securing liberty from interference to the individual citizen. In certain directions States are now actively trying to further the common interest by undertakings of their own, to which citizens are required to contribute by money or services. This form of State action is called "Socialistic." Examples may be found in the management of postal business by the Government, as in England and most other countries; or again in the maintenance of a national system of railways controlled by the State, as in Germany and Belgium. A State should exercise much caution before embarking upon any fresh Socialistic enterprise.

§ 4. **The English Legislature.**—Rules enforced by the State upon its members are called laws. They are made by the Legislature—the organ through which the State lays down the lines of conduct to be observed by its members.

In our country the supreme law-making authority is vested in the King and the two Houses of Parliament. Every new law must be passed by the Houses of Parliament

and must receive the assent of the King. The two Houses are the House of Lords and the House of Commons. The former consists chiefly of the peers of the realm, who sit by hereditary right; the latter of 670 members chosen by the citizens of the United Kingdom to represent them in the work of making laws, and providing for the national expenditure. But though these members thus sit as representatives, they act with full powers, so that until Parliament is dissolved it is impossible for the electors to interfere with their action. The House of Commons, on account of its representative character, is in practice much more powerful than the House of Lords.

This form of government, in which the greater part of the men of the nation have the privilege of electing deputies to control expenditure, impose taxes, and assist in the framing of laws, is known as a Representative Government. It is the form which offers the best protection to the liberties of the subject.

§ 5. **Duties of a Voter.**—It will readily be seen that there are grave responsibilities cast upon both the representatives and the electors. A citizen should regard his vote not as a right exercised for his own personal advantage, but rather as a trust for the good of the community. He should pay careful attention to the claims of the candidates, enquiring into their character and ability, and should give his vote to the one whom he finds best fitted to be a member of Parliament. He should bear in mind that not to vote is to shirk responsibility—to refuse to take advantage of an opportunity of doing good.

§ 6. **Duties of a Member of Parliament.**—The responsibilities of the representative are very heavy. He has to look after the interests of his own locality, but his duties will consist chiefly in deliberation on State affairs. He must serve his party, for he was probably elected with a

view to his party programme: but he must not let service degenerate into servility. He must be ready to take a stand of his own when his conscience demands it. He should attend Parliament regularly, and should try to understand the business before the House; further, without hindering progress by unnecessary interference, he should be ready to take his part in debate whenever his knowledge or experience can be of service.

§ 7. **By-laws.**—The citizen is subject not only to the rules imposed by Parliament upon the general community, but also to rules made by local governing bodies, such as Town Councils and County Councils, for the securing of order and good government within the areas administered by them. Rules of the latter class are called "by-laws." They have force only in so far as Parliament has conferred upon their authors the power to make them; but most local governing bodies have received such a power, subject to certain limitations.

§ 8. **Duties binding in Conscience.**—There are other duties besides those imposed by the law of the land and local by-laws. For example, there is an obligation, generally recognised, to behave with courtesy, and, so far as one is able, to help a man in bodily danger; but there is no law to impose punishment when such a duty is neglected. The only evil that the offender is likely to suffer is a fall in the estimation of his neighbours.

Wherein, then, does the obligation consist in cases like these? The answer is that it consists in the individual's own sense of what is right. This will always be acted upon by the current opinion of the society and the age in which the individual moves; and in many persons there will be found a slavish reflection of such opinion, so that their own view of what is right and proper always follows the views of their neighbours. Still, this is by no means

universally the case; and it remains true that what *binds* the individual to act or to refrain from action in a given direction is his own conscience.

§ 9. **Relation between Moral and Legal Duties.**—Duties of this sort, binding in conscience, are called *moral* duties. As such they are not enforced by the courts of law; though many of them coincide with legal duties, which are so enforced. There is, in fact, a general moral duty to obey the law. This should be a matter of conscience with every good citizen.

But there is a point at which the moral duty ceases. It may, indeed, become a moral duty to *disobey* a given rule of law. The good citizen should, however, be careful not lightly to put forward conscientious grounds as an excuse for disobedience to law; for a well-trained conscience will recognise that the wilful breach of a particular rule tends to overthrow the whole system of government, and will generally be willing to give way in one point for the sake of upholding the general principles of order and respect for law.

With nearly all legal rules there is a clear moral duty to obey recognised by all: thus no one will deny that a citizen is under a duty, in conscience as well as in law, to serve on a jury, to help the police in case of need, to act as a Town Councillor when elected, to pay rates and taxes, to take proper precautions in case of infectious disease, to educate his children, and, generally, to observe the law.

While legal duties have thus nearly always moral duties to back them, there are many moral duties which are not enforced by law. Thus one is morally bound to exercise one's right to vote, to behave considerately towards one's neighbour, to give one's child a fair start in life: yet none of these duties can be enforced in a Court of Law. And in

a similar position are a whole number of duties embraced in the general terms public spirit and patriotism. The legislature, while it prevents one man from interfering with another's freedom, does not, in short, compel anyone to be "a good citizen."

CHAPTER II.

THE LEGAL POSITION OF THE CITIZEN.

§ 10. **Law as a fixed Standard of Action.**—A citizen's legal duties and rights differ from his moral duties and rights in that they may always be ascertained by reference to a fixed standard, the law of the land. It is true that the law is in many places obscure and hard to understand; still there it is, to be understood and made clear by persons possessing the requisite knowledge and skill.

Moral duties depend entirely on the individual conscience; the task of settling the rules that each man's conscience should adopt is left to moralists and philosophers, whose results often differ. Moreover, even if such rules could be fixed, there would be no one with authority to enforce them. Legal duties, on the other hand, depend upon a code which is set or enforced by a definite authority, and the only difficulty lies in interpreting the accepted rules to meet specific cases as they arise.

§ 11. **The Function of the Courts.**—The work of interpreting the law is the duty of the courts; and when once a question has been determined by the final Court of Appeal it is settled for good. All lower courts are bound to follow the ruling of the final court; and the final court will generally hold itself bound by its own ruling. The decision of such a court upon each fresh question makes what is practically a new law, applicable to all cases of which the circumstances resemble the case decided. The process is really one of tacit legislation.

§ 12. **Common Law and Statute Law.**—In this way the exact bearing of general principles is worked out in detail. The general principles are well established and universally known; and as soon as any doubtful point of law gains practical importance it is usually not very long before it is finally decided by authoritative interpretation of the existing settled rules. A large number of the underlying principles of the law have themselves been built up by judicial decision in this manner, far back in the history of our legal system; others have been laid down from time to time in Acts of Parliament.

That body of law which is the product of judicial reason acting on circumstances as they have arisen is known as the Common Law; that body of law which is the product of Parliamentary enactment is known as Statute Law.

The Supremacy of Parliament and the Rule of Law.

§ 13. **The Fundamental Principles of the Constitution** are most of them to be found in the common law; for it became necessary for the courts to consider and determine questions involving the extent of the legislative powers of the Crown, and the right of individual citizens to personal security, freedom of speech, and integrity of reputation, early in the history of law, long before Parliament showed activity in legislation. As a result of this, these fundamental principles are firmly rooted in the life of the nation.

§ 14. **The Supremacy of Parliament.**—The first great constitutional principle is the legislative supremacy of Parliament. The King, the House of Lords, and the House of Commons, acting together in Parliament, make laws, known as Acts of Parliament, which are binding

upon the nation. In making laws Parliament is entirely unfettered. Whatever it enacts will be enforced by the courts, backed as they are by the whole executive machinery of the State. And no one has any power to interfere with what Parliament chooses to ordain. In the words of Professor Dicey, "Parliament has, under the English Constitution, the right to make or unmake any law whatever; and no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament."[1]

It is easy to illustrate this statement by historical instances. Parliament can make or unmake any law whatever. Thus in 1716 a Parliament elected in 1714 for a term of three years only—the Triennial Act of 1695 being then in force—passed a Septennial Act, whereby, without consulting the electors, it prolonged its own existence for a further term of four years; and this statute was accepted as law, and has been in force ever since. And, by Acts of Indemnity, Parliament occasionally goes so far as to enact that offences against the law committed by specified persons shall be treated as having been legal all along.

Again, no person or body can override the legislation of Parliament. Hence when James I., following the example set by the Tudor Kings, tried to alter the law by his own Proclamation made independently of Parliament, the result was a famous declaration by the judges in 1610 to the effect that no such Proclamation could alter the law. That this declaration is a sound statement of the law on the matter is not open to doubt.

There is thus no doubt whatever of the supremacy of Parliament. A citizen is legally bound to observe what Parliament enacts; very many of his rights and duties

[1] Dicey, *Law of the Constitution*, p. 38.

actually take their origin in statute law; by statute law his existing rights and duties may at any moment be changed.

§ 15. **The Rule of Law.**—Another outstanding feature of the English Constitution is what is known as "the Rule of Law." This means that every man is subject to the ordinary law of the land, and to the ordinary law alone; unless, that is, he belongs to certain professions such as the Army or the Church. If he does this he will be bound by special duties without being exempted from the obligation to obey the ordinary law. In all such cases a position carrying disabilities has voluntarily been taken up. But apart from them no man can be punished except for a breach of the ordinary law regularly proved before the ordinary courts.

On the other hand, no man is exempt from the ordinary law or has a right to be tried by special courts, to the exclusion of the regular tribunals. There does not exist in England, as there does in certain countries of the Continent, any arbitrary power on the part of the Executive (*i.e.* those officials of the State who are charged with the enforcement of the law and the management of the machinery of government, such as a secretary of state, a tax-collector, a magistrate, or a police constable) enabling it to interfere with the liberties of private citizens in ways not expressly authorised by the ordinary law.

§ 16. **Position of Officials in English Law.**—In contemplation of the common law, a police constable is in much the same position as any other citizen; except that what an ordinary citizen *may* do in the way of securing the enforcement of the law, a policeman is often *bound* to do. A policeman, though thus subject to special duties, has no special powers; the few exceptions to this principle are strictly defined by law.

A constable who without authority from the law has made an arrest, a soldier who has shot a member of a mob when the necessities of the case did not warrant his firing, will not escape trial by the ordinary courts on the criminal charges of assault and murder respectively.

A warrant authorising a constable or other person to make an arrest, or to seize property, must not be general in its terms. It must state the name of the individual to be arrested, or specify the property to be seized (except in the case of a search warrant for goods stolen or obtained by fraud, when it is not necessary to specify the goods). If a magistrate issues a warrant which does not conform to this rule, and in obedience to it a constable makes an arrest or seizure, the magistrate, the constable, and all other persons concerned in the illegal proceeding, can be made to answer for their action before a court of law. In some cases they may be liable to punishment by fine or imprisonment, and in all cases they will have to give compensation to the person injured.

§ 17. **"Superior Orders" no Defence.**—It will be of no avail for the constable that he acted under superior orders. This is in English law no defence. Every person concerned in an illegal action, from the greatest down to the least, is equally liable to be called to account.

This rule bears heavily upon servants of the State in the lower grades: and is especially hard upon soldiers. For, while a constable may be liable to penalties from the law if he obeys an order, and to the displeasure of his superior if he disobeys it, a soldier is subject to two sets of courts —to courts-martial and to the ordinary courts of law,— one of which may punish him if he disobeys the order, and the other punish him if he obeys it. Under the Army Act it is a *capital* offence for a soldier to "show a wilful defiance of authority." [Sec. 9, ss. 1.] A mere respectful

statement by a soldier in such words as, "I will not do it," would not amount to this offence; but even then he would still remain liable to penal servitude for life for the military offence of "disobedience." [Sec. 9, ss. 2.]

It is true that the military law enforced by courts-martial requires obedience to *lawful* orders alone; but it is plain that the judgment of a court-martial, composed of military men, as to the lawfulness of an order may not improbably differ from the judgment of an ordinary court of civilians.

Of course, a soldier who has committed a crime in obedience to an unlawful order may receive a pardon for his offence from the Crown. But such a pardon is an act of grace. And it would relieve the offender only from criminal punishment; it could not possibly take away the right of individuals injured by his wrongdoing to recover compensation from him.

§ 18. **All Officials subject to the Ordinary Law.**—To sum up, in the words of Professor Dicey: "With us, every official, from the Prime Minister down to a constable or collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen. The Reports abound with cases in which officials have been brought before the courts, and made, in their personal capacity, liable to punishment, or to the payment of damages, for acts done in their official character, but in excess of their lawful authority. A colonial governor, a secretary of state, a military officer, and all subordinates, though carrying out the commands of their official superiors, are as responsible for any act which the law does not authorise as is any private and unofficial person."[1]

[1] Dicey, *Law of the Constitution*, p. 189.

The Crown and Ministerial Responsibility.

§ 19. "**The King can do no wrong.**"—There is only one person in the whole realm who is officially exempted from legal responsibility for acts in which he takes part, and that is the King.

It is an old maxim of the law that "the King can do no wrong." This means, on the one hand, that the King cannot be made to answer before any court of law for any wrongful act done by him. If he were to commit a murder, no court would be able to try him. If he should incur any obligation towards a private individual, as by making a contract, detaining property, or committing some wrong, there would be no legal means by which the subject could enforce his right, except by favour of the King himself.

On the other hand, the maxim denotes that liability for the King's policy rests not with him but with the Ministers who advise his policy.

§ 20. **Grounds of the King's immunity.**—The exemption of the King from all legal liability, criminal or civil, was attributed by the old lawyers to an imaginary perfection in his will, which rendered him incapable of doing wrong. But although the law refuses under any circumstances to treat the King himself as a wrongdoer, it is not on this account blind to the nature of the King's actions. That is to say, if the King does an illegal act, the courts will recognise that in itself the act is wrongful, and though they will not punish the King, they will punish any other person who may have helped in, or advised, the act. Thus one at whose instigation the King should commit murder would himself be hanged, just as he would if he had instigated a private person to the deed.

The King's exemption from liability is therefore now explained as due to the absence in the British constitution

of any tribunal having jurisdiction to try him, or to hear and decide upon claims made against him by his subjects.

The King, indeed, is the fountain of justice, and in the theory of the law the courts are his courts. It is clearly impossible for a man to try himself. And though since 1607 it has been accepted that the King in his own person cannot judge any case, criminal or civil, but must act through the Justices of his Courts, the judgments which the King himself is thus debarred from expressing still legally remain the King's judgments.

In 1607 it was also said that the King in person cannot arrest a man for suspicion of treason or felony, as any ordinary citizen might do. The reason given for this is striking: if, it was said, the arrest should be wrongful, the subject would be deprived of his remedy, for he could have no remedy against the King.

§ 21. **Proceedings by Petition of Right.**—If the theory as to the King's immunity from process of law were strictly carried out in practice, no man would care to make a contract with the Crown, which would thus be greatly hampered in its dealings. But there is a certain procedure by which the subject may have his remedy against the King in case of an alleged breach of contract, though only by favour of the King himself.

The subject sets forth his claim in a petition, called a "petition of right." This is submitted to the Home Secretary, who examines the claim and decides whether there is really any question to go before the courts. If he decides in favour of the petition, the King, on his advice, writes on the petition a permission that the claim shall be tried. The Secretary can advise as he likes, and his advice will in all cases be followed: no action will lie against him if he advises adversely to the claimant. But his duty is to see that no subject is defrauded of his just rights. If the

King's permission is given, the case goes before the ordinary courts, and the subsequent proceedings follow the lines of an ordinary action between subject and subject. This procedure applies only to cases arising out of contract, or out of the possession by the crown of property claimed by the petitioner. There is no procedure available for cases where the King has committed an ordinary wrong, in the nature of an offence against a subject's general rights to personal security, property, etc.; and the King cannot be made to answer criminally for any act. Thus, if he chose, he could walk at will over a subject's lands, knock down a private citizen, enter upon a systematic course of theft, or blow up the House of Commons with dynamite, and no court of law would be able to touch him.

§ 22. **Legal liability of Ministers of the King.**—Here then we get an exception from the liability of every man to the ordinary law of the land. But this freedom from responsibility is personal. It is confined to the King himself, and does not extend to his Ministers.

Any official, from the Prime Minister down to a policeman, who takes part in an illegal act committed by the sovereign, will himself be fully liable just as if the act were his own. If the act is a crime, he may be punished by a criminal court with as great severity as if he were the chief offender. If the act is simply an offence involving interference with the rights of an individual citizen, such as trespass, the official may be made by a civil court to pay damages to the full extent.

§ 23. **Responsibility of Ministers of the King.**—The maxim that "the King can do no wrong" does more than merely absolve the King from legal liability for acts which conflict with the law: it also prevents constitutional responsibility from attaching to him for the public policy of the State, which is in theory his policy.

Here no legal liability arises at all,—the only question is, who is the proper person to be blamed by the general opinion of the nation. And general opinion has established the rule that this person is not the King. If the King were to-morrow, quite unprovoked, to commence a war with France, no blame would, constitutionally speaking, attach to him; the blame would rest on the Ministers who advised the war. There would be no legal liability anywhere, but there would be grave constitutional and moral liability attaching to the Ministers of the Crown.

§ 24. **The King must govern through his Ministers.**—The English system of government is such that the King cannot govern without the consent and advice of his servants; just as he can only try a case through the medium of his Judges, so he can only act officially through the medium of his Ministers. In certain ways alone can the King's will be expressed validly—that is to say, expressed so that it becomes the duty of the subject to whom it is addressed to act upon it—and all these ways require the concurrence of a Minister.

The mode of expression employed may be an Order in Council, as is the case with the command for the issue of writs for a new Parliament; here all members of the Council present when the Order was issued are held responsible. In certain cases, again, a Proclamation under the Great Seal is employed, as would be the case with a Declaration of War. The Lord Chancellor, who affixes the Seal, will be responsible for this. Moreover, for the affixing of the Great Seal an authorisation under the Sign Manual of the Crown is necessary, and every document under the Sign Manual is required to be countersigned by some Minister, who thus becomes a party to it.

§ 25. **The Influence of the King in Government.**—An Order, a Proclamation, or a Sign Manual document issued by the King alone, without the concurrence of a Minister, would be mere waste paper. Thus Ministers are necessary to the Crown in order that it may carry on the bare work of government. This enables them to insist that their advice shall be followed in all matters of policy; and so the Crown governs by the advice and with the assent of its Ministers. "In exchange for security from the turmoil of politics, the Sovereign is supposed to have resigned the substance of royalty—the right to rule—to other hands."[1]

Still the Sovereign is more than a puppet in the hands of his Ministers. His actual influence in public affairs is considerable. The King stays on while Ministers come and go. This gives, or may give, to him a grasp of affairs which no Minister can get. One who has followed a political question through all its stages should be able to understand its present position better than one who has had to begin his lesson in the middle. And so every opinion of the King necessarily has great weight with his Ministers.

In short, the King has influence, but no power: constitutionally speaking, if he cannot induce his Ministers to alter their plans, he is bound to yield. His hands are tied by the law, because he cannot act either in judicial or administrative matters, except through his servants; his judgment is fettered by the constitution, because it is impossible for him to govern, except by the advice and assent of his Ministers.

It is only in two respects that he can constitutionally exercise his own discretion independently of his Ministers:

[1] Sidney Low, *Governance of England*, p. 260.

he can dissolve an existing Parliament, if he has good reason to believe that it does not represent the opinions of the nation, and he can choose a Prime Minister from the leading politicians of the party in power, when there is no one person of undoubted preëminence within that party.

Applications of the Rule of Law.

§ 26. **The Liberties of the Citizen.**—The King apart, the rule of the ordinary law of the land pervades the British Constitution. It affords a protection against arbitrary action in every department of State; to it may be traced the security with which the fundamental rights of citizenship are enjoyed by British subjects. When we talk about the right to personal freedom, the right to freedom of discussion, the right of public meeting, we simply mean that the liberty which every man possesses to go where he likes, say what he likes, and meet whom he likes, so long as he does not break the law, is not in England restricted in any way by the possibility of arbitrary interference on the part of official persons.

§ 27. **Security from Official Interference.**—The liberty exists in most countries: but in England alone is it fully secured from official interference. It is for this reason—and not because they are in any way peculiar to English law—that the rights above mentioned are usually regarded as a special privilege of the English citizen. The English citizen has, roughly speaking, the same rights as the French citizen: but the English State official is not exempt from the ordinary law, while (in his public capacity) the French State official is. It is the comparison of the English system of law with foreign systems which has caused stress to be laid upon the liberty of the citizen as a feature of the British Constitution.

§ 28. **Liberty of the Person.**—When we speak of the right to personal freedom, the right to freedom of speech, the right of public meeting, we mean, then, to denote liberties which cannot be interfered with by officers of State, except on definite legal grounds.

The right to personal freedom may be defined in the words of Professor Dicey as "A person's right not to be subjected to imprisonment, arrest, or other physical coercion in any manner that does not admit of legal justification."[1] For this right—the one that has been most often violated by the Crown and by State officials—it was seen to be necessary to provide special means of protection: since, although everyone whose rights have been violated in any way has his action for damages, such an action is clearly of little use to a man actually in prison, and prevented from getting free.

The needs of the situation were met by the provision of the writ of Habeas Corpus, which is an order addressed to the person responsible for the unlawful detention of another, calling upon him to produce the body of his prisoner before the court on a certain day, there to certify the cause of his detention. If in law the cause alleged is insufficient ground for the detention, the prisoner will be released at once: otherwise, if he has not yet been tried, a speedy trial will be assured to him. The writ thus affords a valuable protection against arbitrary interference with a citizen's liberty by persons in authority.

§ 29. **Liberty of the Press.**—Freedom of discussion is simply another name for the liberty, which in England every citizen enjoys, to say or write what one chooses, subject to the law forbidding the publication of statements seditious (*i.e.* exciting to disaffection against the State or

[1] Dicey, *Law of the Constitution*, p. 203.

the Government), blasphemous (*i.e.* denying, or involving disrespect to, the truths of religion), or defamatory (*i.e.* calculated to injure the reputation of another).

In England this liberty is not restricted by any power on the part of the Government or its officials to prevent the publication of objectionable statements. No censorship of the Press has existed in England since 1695, the only trace of the old licensing regulations which still survives being the licensing of plays by the Lord Chamberlain. Hence, as a general rule, a man cannot be prohibited beforehand from making any statement, even though it is well known that such statement will be blasphemous, seditious, or defamatory. Of course, when such a statement has actually been made, the author of it will at once become liable to serious consequences—he will have to suffer the penalties of the law of libel.

§ 30. **The Law of Libel as applied to the Press.**—While under the law of England the Press is thus subject to no special disabilities, on the other hand it enjoys no special privileges or immunities. In Belgium the printer and publisher of a newspaper receive special protection from the law. In England they are subject to the ordinary law; their duties and liabilities are no less, though they are certainly no greater, than those of any other citizen.

§ 31. **Reports of Proceedings.**—This statement with regard to the Press must be taken subject to qualification in the case of reports of parliamentary or judicial proceedings, or of the proceedings of a public meeting, appearing in a newspaper. If such reports are fair and accurate, the editor and publisher of the newspaper, with other persons involved, will as a rule be exempt from liability, though they may thus co-operate in giving publicity to defamatory statements made in the course

of such proceedings. This exemption is established on the ground of the interest of the public in securing accurate news of public affairs. It is limited to newspapers, and so far as it goes there is a special privilege granted to the Press.

§ 32. **Fair Comment.**—The right of "fair comment" on matters of public importance, which is fully recognised by the law, is no special privilege; it is not limited to newspapers, and, besides, if a comment is fair it is not a libel at all. Men acting in a public capacity are considered to lay themselves open to criticism, so far as their actions are matter of public interest; however severe the criticism, it will not be a libel if it is made without ill-will and does not amount to personal abuse. Writers of published books, public speakers, and persons who write letters to the newspapers, are all alike subject to this liability to be criticised freely.

§ 33. **Liberty of Meeting.**—The "right of public meeting," as it is called, is simply an outcome of each man's right to go where he wishes, without interference from any official person, so long as he does not break the law. As Professor Dicey says: "There is no special law allowing A, B, and C to meet together in the open air or elsewhere for a lawful purpose, but the right of A to go where he pleases so long as he does not commit a trespass, and to say what he likes to B so that his talk is not libellous or seditious; the right of B to do the like, and the existence of the same rights of C, D, E, and F and so on *ad infinitum*, lead to the consequence that A, B, C, D, and a thousand or ten thousand other persons, may (as a general rule) meet together in any place where otherwise they each have a right to be for a lawful purpose and in a lawful manner." [1]

[1] Dicey, *Law of the Constitution*, p. 267.

There is no official, from a secretary of state down to a policeman, who has any authority to dismiss or interfere with such a meeting.

§ 34. **Unlawful Meetings.**—This principle must not, however, be received without qualification; for there are certain circumstances in which, by the law itself, a meeting becomes unlawful, when executive officials not only have a right, but are also under a duty, to put a stop to it.

Such circumstances occur when three persons or more assemble together for the purpose of committing a breach of the peace, *i.e.* an illegal act of violence; or when, whatever their purpose, the persons assembled actually commit a breach of the peace; or when, though not either committing or intending to commit a breach of the peace, they conduct themselves so as to lead reasonable men to entertain a reasonable fear that they will commit a breach of the peace.

§ 35. **Other grounds of Dispersal.**—Moreover, a meeting must not amount to an obstruction, *e.g.* it must not interfere with the free use of the public highway; and when a local body within whose area the meeting takes place has made a by-law forbidding meetings of the kind to be held, the meeting may be dispersed—always provided that the by-law itself fulfils the conditions which are legally necessary to make it valid.

Again, if there is no other way of keeping the peace,—even though the danger of a breach may come, not from the meeting itself, but from persons hostile to its object—the persons composing the meeting may be called upon to disperse; refusal to do so will make the meeting unlawful and it will then become liable to be dispersed by force.

Finally, if the leaders of the meeting, without going so far as themselves to commit, incite, or threaten a breach of the peace, act illegally, so as to provoke other persons to

commit violence, then the leaders may be required to find securities for good behaviour.

§ 36. **The Protestant Crusade in Liverpool.**—Thus, in a case which occurred in 1901, Mr. Wise, a Protestant lecturer, held meetings in Liverpool as part of a crusade in the interests of the Protestant religion. In the course of these meetings he put beads round his neck and waved a crucifix above his head in a manner highly insulting to the Roman Catholics, of whom there is a large body in Liverpool; he also called the Roman Catholics "red-necks," which is a term highly offensive to them.

The natural result to be expected from such actions was, obviously enough, a breach of the peace on the part of the Roman Catholics. And accordingly, at a meeting arranged to be held in front of St. George's Hall, Liverpool, where there was a large crowd of about 6000 people waiting for the lecturer, his appearance was the signal for a rush for him on the part of a number of his opponents, which ended in a free fight between them and the supporters of the crusade. The lecturer had to be rescued by the police, and he was taken to the police station.

His own conduct all along had been perfectly peaceable, but the Liverpool stipendiary magistrate bound him over to find securities for good behaviour, and this decision was upheld on appeal to the High Court. There is a local Act applying to Liverpool which forbids the use of insulting language in the streets whereby a breach of the peace should be occasioned. This made the lecturer's conduct unlawful; and though the latter did not at any meeting commit (intend, or threaten) a breach of the peace, nor incite his supporters to do so (beyond telling them that he looked to them for protection in case of violence from the other party), nor cause any serious obstruction, yet the bare illegality of his behaviour under the local Act was sufficient

to render him liable to be bound over to keep the peace. But it does not follow from this that his meetings were "unlawful" in the strict sense, nor that those who took part in them incurred any liability on that account.[1]

§ 37. **Powers conferred by the Riot Act, 1715.**—In cases where a meeting threatens a serious disturbance it is often not enough that the police should have only the ordinary right to disperse the meeting by the use of a moderate degree of force, *e.g.* by employing their truncheons, and that those who take part in the meeting should be liable to the punishment which attaches to the comparatively slight crime of "unlawful assembly." If, for example, a mob armed with sticks and bludgeons enters private premises, and its members begin to throw stones, to break windows, and to set fire to the buildings, things have gone so far that it may fairly be considered that more than ordinary means of dispersal will be necessary to avert serious danger to persons or property.[2]

By the Riot Act of 1715, the legislature has armed the executive with special powers to enable it to deal with circumstances of this kind. Even in this case, however, where one would think that for the averting of grave consequences it was necessary that the executive should be given a free hand, the powers conferred are subject to conditions carefully made to preserve the liberty of the individual citizen.

The Riot Act enacts that whenever an unlawful assembly of twelve or more persons do not disperse within one hour after a Justice of the Peace has read to them a proclamation calling upon them to disperse, their offence ceases to be a mere misdemeanour (*i.e.* a crime of the lower degree)

[1] *Wise v. Dunning* [1902], 1 K.B., 167.

[2] Cf. *Ackton Colliery case*, 1893.

and becomes the much graver offence of a felony. The maximum punishment for this felony is penal servitude for life. This rule has more serious consequences than liability to an increased punishment; for it means that *any* degree of force, even to the causing of death, which is necessary to effect the dispersal of the mob, may be used after the hour has passed. There is a general principle of law that violence may be used to any extent that is necessary in order to prevent a felony or to apprehend a felon; further, the Riot Act itself contains a clause indemnifying persons who, in the use of such force as may be necessary to disperse a mob after the requisite hour has elapsed, cause death or injury to any of its members.

The Act thus, directly and indirectly, confers very large powers upon the executive; but it will be seen that every care is taken to guard against the use of these powers except in case of real necessity—the mob must be of a certain size, its members must be called upon to disperse by a Justice of the Peace, and they must be given an hour in which to do so. If any one of these conditions remains unfulfilled, persons who cause death or grave injury to members of the mob in trying to disperse it will not escape being put on their trial. It is worth while to point out that the question whether the degree of force used was justifiable will be determined, not by the statements of the executive officials concerned, but by the verdict of a jury composed of unofficial persons, sitting in cool blood some days or weeks after the riot has taken place.

§ 38. **The Common Law right to use Force.**—In what has been said above, it has been implied that the executive has a right to use force quite independently of the Riot Act. But if the conditions of this statute have not been fulfilled, the degree of force used must not be more than is strictly consistent with the gravity of the case; and it is

rarely indeed that the use of a degree of force sufficient to cause death or serious injury will be justified except when those conditions have been fulfilled. If a meeting simply causes a great disturbance, without threatening grave danger to persons or property, it would be illegal, unless the Riot Act were put in force, to disperse it by firing or by a bayonet charge, even if these were the only means which would effect the object in view.

§ 39. **Duties of Citizens and Magistrates.**—In case of a riot every citizen is bound to take part in bringing about the dispersal of the mob, when called upon to do so by a magistrate or a constable; failure to fulfil this duty is itself a crime.

A magistrate has special duties cast upon him by his position. On hearing of the disturbance, he must go to the scene of the riot. If he finds that the circumstances demand it, he must read the proclamation of the Riot Act; and he must take all further steps which may be necessary to disperse the rioters. This is his duty, neglect of which will be criminal, unless he has done all that a strong man could have been expected to do in dealing with the disturbance.

§ 40. **Executive Powers in respect of Invasion and Insurrection.**—It will be gathered from all this that in England the executive has a general right to use as much force as is necessary, and no more than is necessary, for the prevention or suppression of breaches of the peace. But this general right goes beyond breaches of the peace; it extends to enable the Crown or its servants to use a necessary degree of violence, even against peaceable citizens, for the putting down of insurrection and the repelling of invasion. Here again the question of the lawfulness of the degree of force used will be determined not by executive courts, such as military tribunals, but by ordinary civil

courts, probably sitting after all the disturbance is over, and composed of persons little inclined to sympathise with military necessities causing interference with the liberty of the subject.

It is the duty of a military officer—and of a soldier in obedience to an officer—to do all that is necessary to put down an insurrection or to repel an invasion, just as it is the duty of a magistrate to do all that is necessary to prevent a breach of the peace, and of a private individual to assist the magistrate at his request. But if officer, soldier, magistrate, or citizen goes beyond the strict necessities of the case, he becomes liable to be punished for his conduct by an ordinary civil court; so that his position is one of some difficulty and danger.

§ 41. "**Martial Law.**"—This right of the military executive to use as much force as may be necessary for the putting down of insurrections and the repelling of invasions is the only institution in English law which corresponds to the term "martial law."

In France, in case of an insurrection, the executive may declare "a State of siege," during which the country is put under military rule, and the courts-martial override the civil courts. But English law knows no such interference with the civil institutions of the realm. A military tribunal has authority to try and punish civilians in circumstances where invasion or insurrection renders it impossible for the courts of law to sit; and, as we have said, a General in command of an army may take all measures, violent or otherwise, which are necessary for the repelling of invasion or the putting down of insurrection. But such acts as these are covered by no indefinite privilege —they are lawful only so far as they are strictly adjusted to the necessities of the case. When peace is restored and the ordinary courts are sitting again, it is to these

tribunals that the question of the necessity of the force used against citizens will be referred for decision.

§ 42. **The Civil Courts and the Courts-Martial.**—The relation between the civil and military courts provides an instructive illustration of the care which is taken by the law to guard against arbitrary action on the part of official persons. In cases of conflict between the two sets of courts the civil courts will prevail. Thus in theory a soldier acquitted or convicted by a court-martial of a crime, *e.g.* theft, may subsequently be tried by a civil court: but a soldier acquitted or convicted by a civil court cannot subsequently be tried by court-martial.

Moreover, in respect of the gravest offences against the ordinary criminal law no court-martial has jurisdiction within the United Kingdom: thus treason, murder, or manslaughter committed in the United Kingdom can be tried only by a civil court. Certain offences, *e.g.* assault on an officer, drunkenness, are offences against both the civil and military codes, but it is usually left to the courts-martial to try these. Finally, certain offences, *e.g.* disobedience to command, are offences only against military law, and over them the courts-martial have exclusive jurisdiction.

The civil courts refuse to interfere with any decision of a court-martial upon a breach of military law committed by a person subject to military law. So long as the court-martial acts as a Court (*i.e.* "judicially") and keeps within its jurisdiction it will be allowed to go its own way. But the civil courts will quickly put a stop to any trial held by a court-martial in excess of its jurisdiction; as when it judges a person not subject to military law, tries murder or manslaughter or any other crime which can be tried only by a civil court, or inflicts a sentence in excess of its power.

In such cases the civil courts have ready means of interference at hand: they can prohibit the court-martial from trying the case, or, if the trial has begun, they can take the case away from the court-martial and try it themselves. Finally, if a person has been imprisoned by the illegal sentence of a court-martial, the civil courts can bring about his release by writ of Habeas Corpus.

The Revenue.

§ 43. **Rates and Taxes.**—Turning now to consider the demands which may be made upon the citizen to contribute towards the expenses of government, we find that here too care is taken by the law to prevent arbitrary official action.

Of course it is impossible to maintain an army and navy, a large staff of judges and minor judicial officers, a whole host of civil servants, and all the other persons and things which play a part in the great machinery of government, without much expense; the expense is met by money collected through public officials from individual subjects under the name of rates and taxes. Taxes are levied by the central government for national purposes; rates by local governing bodies, such as Town Councils, for purposes purely local.

The latter are dealt with later: for the present it is enough to say that no local authority can impose or collect rates except within the limits of the powers conferred upon it by Parliament for that purpose.

§ 44. **Taxation and Expenditure.**—Taxes are imposed directly by Parliament; a tax cannot be demanded, nor can the money raised by taxation be spent, without statutory authority. There is an elaborate system of

checks in force, which guards against any misuse of their power by collecting or spending officials. Moreover, though taxes are levied by Act of Parliament, the control of taxation is in practice almost completely in the hands of the House of Commons alone; so that the individual citizen who has to pay the tax is in a way a party to it through his representatives in the Commons.

The principle which regulates all questions of money in English politics is "no taxation without representation." This principle is so firmly grounded in the mind of the nation that a bare suspicion of any attempt to interfere with it is enough to call forth a great public outcry. The immediate cause of the war of 1775 which led to the establishment of the independence of the United States was a tea-tax levied on the American colonists without their consent. It is now accepted that Parliament will impose no tax on the Colonies unless their concurrence is first obtained.

§ 45. **Powers of the Commons.**—The House of Commons is practically the sole authority in taxation. An Act of Parliament imposing a tax, like every other statute, requires the consent of the King and the House of Lords as well as that of the Commons. But the assent of the Crown is now given as a matter of course to all Bills, whether dealing with taxation or not; it is two hundred years since this assent has been refused to any measure passed by the two Houses.

As to the Lords, it has long been settled that this House cannot constitutionally initiate or amend a Money Bill; and when in 1860 it exercised its right of rejection in respect of a Bill repealing the paper duties, the result was a dispute with the Commons which has made it very clear that any future exercise of this right by the Lords would be highly dangerous.

§ 46. **The Appropriation Act.**—All the revenues of the country are now dealt with by Act of Parliament. Some part of the taxation and some part of the expenditure of the realm is provided for by permanent statutes. The rest is levied and spent under the authority of an annual "Appropriation Act," which specifies the amount of money to be raised, the means by which it is to be obtained, and the uses to which it is to be put.

CHAPTER III.

THE GENERAL RIGHTS OF CITIZENSHIP.

§ 47. **The Liberties and Rights of the Citizen.**—In the preceding chapter the position of the private citizen in England in relation to the Government and its officials has been sketched. It has been shown that these officials are subject to the ordinary law and the ordinary courts, and that they cannot interfere with the liberty of the private citizen, except in certain ways recognised and closely defined by law, the general principle being that an official may (and must) do all that is necessary for the proper performance of his duty, but no more.

The nature of the citizen's rights has thus been made clear. They are liberties protected by law, which can be enforced even against the executive itself. This Chapter will be occupied with a consideration of specific rights in detail. No attempt will be made to deal with all the rights which a citizen may enjoy: but there are certain rights which, in some form or other, belong to the subjects of every civilised State—which, therefore, a citizen may expect to enjoy as a bare consequence of the fact that he belongs to such a State—and these will now be described as they appear in English law.

§ 48. **Personal Safety and Freedom.**—The rights of personal safety and freedom consist in "a person's legal and uninterrupted enjoyment of his life, his limbs, his body, and his health"; and in "the power of locomotion, of changing

situation, or removing one's person to whatever place one's own inclination may direct, without imprisonment or restraint, except by due course of law."[1] No man is allowed even to threaten another by acts of violence, *e.g.* by shaking his fist, if he is in a position to put his threat into immediate execution.

During early years these rights are limited to a considerable extent by the control of parents and guardians. A parent is free to inflict moderate chastisement upon his child; and so is a schoolmaster, guardian, or other person standing in place of a parent. On the other hand, a parent is bound to provide for the keep of his children, even if he has to accept poor-law relief in order to be able to do so. He must furnish medical aid for a child who is ill; and, generally speaking, he is bound to take care of his children, and will be punished by law if he neglects them. He is now required by law to provide his children with education; this need not cost him anything, since the State has provided schools in which children may be educated free of charge.

By the old law, a husband had the right to beat and imprison his wife, but these rights are now obsolete, and cannot be exercised. The same may perhaps be said of a master's right to chastise his apprentice.

A subject may, to a certain extent, agree to waive his right to personal security. Thus a man who takes part in a football match or other lawful sport cannot complain if in the ordinary course of the game he gets hurt. But no man is allowed to consent to the infliction of serious injury upon him, *i.e.* such injury as may involve the loss of life or limb, or serious interference with health. And so if one man hurts another in a *dangerous* sport, *e.g.* a duel or a

[1] Blackstone's *Commentaries*, Book I., chap. i., s. 1, 2.

prize fight, the consent of the other will be no excuse, for the sport itself is unlawful.

§ 49. **The Right of Self-Defence.**—A citizen may protect his personal security by measures of force taken in self-defence, so long as the force used is not more than is necessary and reasonable, taking into account the seriousness of the threatened danger. If the force used is necessary and reasonable in this sense, even the killing of the person making an attack will be excused.

In addition to the use of force in self-defence, one is entitled to use as much force as is necessary in preventing the commission of a crime of the graver order called felonies (if such felony involves violence), or to bring to justice one who has committed a felony. And a person who is present when a felony is committed is not only entitled, but bound by law, to do all that is necessary to bring about the felon's arrest. Thus where a man commits a burglary in my house and I catch sight of him climbing over my garden wall, I am justified in shooting him if I have no other means of capturing him or getting him captured. A reasonable degree of force may also be used to put an end to a breach of the peace.

§ 50. **Remedies for Injury to Safety or Freedom.**—In addition to his right of self-defence, the citizen also finds a protection for his personal security in his right to obtain compensation by action at law from all who interfere with his liberty, and in the procedure provided by the Habeas Corpus Acts. A writ of Habeas Corpus will enable a man unlawfully imprisoned, whether by private persons or by public officials, to recover his freedom.

§ 51. **Immunity from Careless Injuries.**—Every man is protected against injuries caused through the carelessness of others. A reasonable degree of forethought and care is required in the doing of even a lawful action which may

involve danger to others. A person injured through neglect of this duty can recover compensation by action at law. Thus one who causes an accident by driving on the wrong side of the road will often be liable for damages.

§ 52. **No Slavery in England.**—Slavery is now not tolerated under the British flag. A petition from the Quakers in 1782 started the agitation for the abolition of the slave trade. Before this, in 1762, it had been declared from the bench that a man became free as soon as he set foot on British soil; ten years later this was confirmed by Lord Mansfield, then Chief Justice, in a great case known as *Sommersett's Case*. By the magnificent efforts of Thomas Clarkson, Wilberforce, Pitt, and Fox, the House of Commons was led to prohibit the slave trade in 1807; and in 1834, at a cost of many millions, every slave in the British Colonies was set free. Other civilised countries gradually followed this example.

A slave becomes free as soon as he sets foot on British soil or on a British ship. In 1890-1892 all the civilised powers of the world entered into a great treaty for the suppression of the slave trade in Africa.

§ 53. **Functions of the State.**—The State charges itself with the duty of protecting its subjects from the attacks of foreign enemies and from riot and disturbance at home. It has consuls and other agents established abroad, whose duty it is to look after the commercial and other interests of subjects resident in foreign countries.

§ 54. **Religious Liberty.**—A man has the right to worship God in whatever way he pleases, so long as he does not disturb the peace.

Until the reign of Elizabeth, religious liberty was not thought of by the State. The first real attempt to grant liberty of worship was made by Charles II. in his Declaration of Indulgence; this king had previously laid down the

principle that no man ought to be called in question for a difference of religious opinion which did not disturb the peace of the kingdom. The Toleration Act of William and Mary's reign expressly excluded Roman Catholics and Unitarians, and did nothing more than recognise the fact that other forms of worship existed in the State besides that of the National Church. In 1767 the principle of toleration was affirmed by Chief Justice Mansfield. By 1835 all Protestant dissenters were free from interference with their religious and civil liberty, the Catholic Emancipation Act had been passed, and the battle of religious freedom had been won.

Religious tests have gradually been done away with. In 1875 Nonconformists were freely admitted to the Universities of Oxford and Cambridge. The Parliamentary oaths originally excluded Nonconformists, Roman Catholics, Jews, and Freethinkers from the House of Commons; but certain classes of Nonconformists were early exempted from the obligation to take the oath. Roman Catholics were freed from their disabilities in 1829, Jews in 1861; and finally the Oaths Act, which was a result of the cases connected with the name of the late Charles Bradlaugh, enabled any member to affirm in place of taking the oath. Officers of State are now almost entirely free from religious tests; but the King is required to be a member of the Established Church, and neither the Lord-Lieutenant of Ireland nor the Lord High Chancellor may be a Roman Catholic.

§ 55. **Freedom of Speech, etc.**—As we have seen, a citizen enjoys perfect freedom of speech; the right to say or write what he chooses, provided that this is not blasphemous, obscene, seditious, or defamatory of another's reputation; and the right to attend any lawful public meeting.

§ 56. **Family Rights.**—A man has a right that his family relations shall not be interfered with. He has a right to the society of his wife. He is entitled to the custody and government of his children until they reach the age of twenty-one years or (if daughters) marry. He has, probably, a right to the earnings of any child living under his control. By means of the writ of Habeas Corpus he can recover the custody of his children from any person who may have deprived him of it.

§ 57. **Right of Reputation.**—A man has the right that the respect which others feel for him, in so far as it is well founded, shall not be diminished. Any published words, spoken or written, any gestures or pictures, that may disparage a man, will give rise to liability to an action for damages, unless it can be shown that the charges conveyed are truthful, or that the case is covered by special circumstances of "privilege." The offender will also in many cases be liable to criminal punishment.

§ 58. **Right to general advantages of Social Life.**—A man has the right to the unmolested pursuit of the occupation by which he gains his living. Persons who combine together to molest a man in the carrying on of his business, as by the boycotting which Trades Unions sometimes carry out, will become liable in damages if they do this not merely for the advancement of their own trade interests, but with the direct object of [illegible] on the person obnoxious to them. On the other hand, it is quite lawful for persons to combine together to get the whole of a business into their own hands, and, in the course of trade competition, to induce others not to deal with rival traders.

Everyone has a right to the free use of the public highways and of navigable rivers, to the use of the public posts and telegraphs, and of all other national advantages.

Resort to the law courts for the deciding of *bonâ fide* claims and for the punishment of wrongdoers is a privilege of every citizen; but the process of the law must not be abused to the injury of another.

§ 59. **Property Rights.**—The State secures for everyone the free use, enjoyment, and disposal of all his gains, whether land or goods. Parliament alone can force a person to part with his land for public purposes; but this is only done in certain cases where it is of great public importance that land should be obtained, as for the construction of a new railway. Even here Parliament proceeds with caution, and is careful to indemnify the proprietor fully for any loss sustained.

It is a common maxim that "an Englishman's house is his castle." This means that a man's home cannot forcibly be entered by the police except under a legal warrant. A constable who should enter a man's house without proper legal authority would be as fully liable as a private individual offending in this way. No citizen of England can be made to pay any tax, even in defence of the realm or for the support of Government, without the consent of his representatives, regularly signified by Act of Parliament.

§ 60. **Right to Immunity from Fraud.**—The State will protect a person who is induced by fraud to act to his own damage. If a man is misled by a statement false to the knowledge of the maker, so that the former enters upon a course of action harmful to his own interests, compensation for the damage sustained may be recovered from the maker of the statement.

§ 61. **Poor Relief.**—It is the right of all really needy persons to be given shelter and relief in the workhouses provided for this purpose by the Guardians who administer the Poor Law. The Guardians are under no obligation to provide outdoor relief, *i.e.* to help poor people in their

own homes with food and money; but in many cases this is done. A person who is in receipt of poor-law relief loses his right to vote. In times of great distress extending over a wide district, public relief works are sometimes undertaken by the State for the benefit of those who are anxious to work, but can find no work to do.

§ 62. **Education.**—In modern times the State has come to set a very high value on the education of the people; so that it now compels parents to educate their children, either personally, or in the public or private schools generally established. A parent has the right to demand free education for his children in a public elementary school.[1] If there should be no such school within convenient distance, the State, after inquiry, will cause one to be established.

In addition to its care for elementary education the State, through the various central and local authorities, provides funds for technical, scientific, and artistic instruction, maintains museums, art galleries, and public libraries, furnishes the means for the conducting of scientific investigations likely to result in discoveries of national value, and makes grants to Universities and Colleges established for the encouragement of higher learning.

[1] *Education Act*, 1891.

CHAPTER IV.

THE GENERAL DUTIES OF CITIZENSHIP.

§ 63. **Connection between Rights and Duties.**—The chief rights enjoyed by a citizen as such have now been set forth, with special reference to the form which they take under the law of England. It becomes necessary to state that all these rights involve corresponding duties. A legal right is a power given by law, in virtue of which one man has the capacity of making others act, or forbear from acting, in a certain way. Thus the right to enforce one's contracts involves the capacity of demanding the fulfilment of a promise from its maker; and the ownership of a piece of land involves the capacity of preventing all other persons from interfering with one's exclusive enjoyment of the land, as by trespassing and the like.

All legal rights are protected by the law: this means that the courts will cause those who infringe such a right to make compensation to the owner of the right. For example, a man who refuses to perform a legal contract made by him will be forced by the courts to pay to the other party a sum of money equal to the loss sustained by the latter. A trespasser will likewise be compelled to pay to the owner of the land the estimated money-value of the damage done.

§ 64. **General and Personal Duties.**—Now it is just in this liability to interference on the part of the courts if one does a forbidden act, or omits to do an act commanded, that a legal duty consists; and as a right would be of no

use if the courts were not ready to protect it, we can clearly see that every right must involve a corresponding duty.

Such a duty may be owed by the community generally, or by a particular person alone. The duty to abstain from interference with the exclusive enjoyment of a thing by its owner is a duty owed by the community generally: for all members of the community, not just a particular person, must abstain from trespassing, and any one who does trespass will be compelled to make compensation. On the other hand, a duty to perform a contract is owed by the particular person who has made the contract, and no one else; he, and he alone, can be forced to fulfil the promise.

The duties which correspond with the rights mentioned in the last chapter are duties owed by the community generally, and therefore every citizen is bound by them. The only rights which give rise to duties on the part of particular persons are (1) the right to the fulfilment of legal contracts by the person who has made them, (2) a few other rights like these, *e.g.* the right to receive back money paid under mistake as to a matter of fact, and (3) the right to receive redress when a duty, which may itself be general or particular, has been broken and a wrong has been done. The breach of any duty gives rise, as we have just seen, to a right to exact compensation: and the duty to make compensation which corresponds to this is owed by a particular person, namely, the person who has done the wrong complained of. Thus a trespasser breaks a general duty which is owing from him simply as a member of the community: the trespass gives rise to a claim for damages on the part of the owner of the land, and to a duty to pay such damages, incumbent on the trespasser as the particular person who has done the wrong.

§ 65. **Duties towards the Community generally.**—All rights thus involve correlative duties. But there are certain duties which do not involve correlative rights: unless, that is, we hold that the public at large may have a right. These are duties which are imposed by the State in the interests of the public as a whole, not of its members as individuals. Thus a person who refuses to pay taxes, or who takes part in a riot, will be punished by a court of law; but it is the community generally, not any particular individual, which benefits by the payment of taxes and the absence of rioting. Every citizen is under a duty to pay his taxes and to refrain from rioting, but this is not a duty which it is possible to connect with the ownership of a right by any particular person.

There are a whole number of duties thus imposed by the State, the object of which is to secure for the community as a whole the benefits of order, good government, and peace of mind. It may be added that many of these coincide with other similar duties imposed for the protection of members of the community considered as individuals. Thus if one man strikes another he violates the right of that other to the security of his person; he also does an act the effect of which is to interfere with the peace of the community considered as a whole. He may therefore be compelled, by one set of courts and one mode of procedure, to make compensation to the person he has injured; while, by another set of courts and another mode of procedure, he may be subjected to punishment—fine or imprisonment—with the object of showing that the community as a whole does not mean to allow its peace thus to be interfered with.

§ 66. **Duties of the Criminal Law.**—That branch of the law which imposes duties for the benefit of the public at large, and provides for the punishment of those who break

them, is called criminal law; that branch which confers rights on individuals, imposes corresponding duties, and provides for the making of compensation in case those duties are broken, is called civil law.

In a later chapter it will be necessary to examine the precise form which this distinction between criminal and civil duties takes in the law of England. Here it is sufficient to say that among the acts forbidden by the criminal law of England are treason (a breach of the duty to be loyal to the King and Parliament), murder[1] (the unlawful killing of a man accompanied by a specially blameworthy state of mind), manslaughter (the unlawful killing of a man under circumstances not so heinous as to make the offence a murder), wounding, assault, arson (wrongfully setting fire to buildings, etc.), burglary (breaking and entering a dwelling-house by night with intent to commit a crime of the graver order, known as felonies, therein), housebreaking (the same when done by day), larceny (theft), embezzlement (the misappropriation of money, etc., by a clerk or servant), obtaining money or goods by false pretences, forgery (fraudulently making a false document, *e.g.* a cheque in another man's name), conspiracy (the agreement by two or more persons to effect an illegal purpose), perjury (taking a false oath in a judicial proceeding), bigamy (going through the ceremony of marriage while having a legal wife still living), libel (writing and publishing statements defamatory of another's reputation, seditious, indecent, or blasphemous), piracy (wrongful violence on the high seas), and vagrancy offences (*e.g.* begging, gaming in a public place, sleeping out "without visible means of subsistence").

Every person is under a duty, which will be enforced

[1] Most of the succeeding definitions are based upon those given in Dr. Kenny's *Outlines of Criminal Law*.

by fine, imprisonment, or in some cases even by death, to refrain from committing any of these offences.

§ 67. **Other Duties towards the Community.**—Other legal duties owed by the citizen towards the public generally are the duty to pay taxes and rates, to serve upon any public body, such as the House of Commons or a Town Council, when duly elected, and to refrain from serving if not duly elected; to sit upon juries when chosen, to help a policeman in the execution of his duty if called upon to do so, to do all that is possible for the apprehension of a person seen to commit a felony, and to treat courts of law with proper respect.

§ 68. **The Duty to obey the Law.**—All general legal duties owed by citizens, whether they come under civil or criminal law, may be said to be bound up in one great duty, the duty to obey the law. This duty is a moral as well as a legal duty: that is to say, not only will the courts interfere to inflict punishment or exact compensation where the duty has been disregarded, but the latter is, or should be, binding upon every citizen as a matter of conscience.

§ 69. **Moral Duties of the Citizen.**—In the first chapter it has been pointed out that wherever there is a legal duty there is, as a rule, a moral duty of the same kind: though under certain circumstances the moral duty may cease to exist, or there may even be a moral duty to disobey the law. On the other hand, it has been shown that there are a number of moral duties to which legal force cannot well be attached. We now come to consider the chief moral duties which are binding on the citizen.

§ 70. **Order and Respect for Law.**—A good citizen should not be content with rendering bare obedience to the law. He should obey it readily and cheerfully, and should do all that lies in his power to secure its observance by others. He should be ready in case of necessity to give active

assistance to the executive officers of the law—magistrates, police constables, etc.—in their efforts to preserve order and put down crime. He should cheerfully render jury service when chosen for this task.

He should help local authorities in preventing the spread of disease, and should perform punctually and willingly such duties as the registration of births and deaths and the notification of infectious diseases. He should do his best to further the work of preventing cruelty to children and dumb animals: this work cannot be done effectively unless all right-minded men are ready to assist by reporting such cases of cruelty as come under their notice.

§ 71. **Duty of Voting.**—It has been pointed out that a vote constitutes a trust held by each citizen on behalf of the community, which should be exercised with due regard to the public benefit. Where political power is placed in the hands of the people, the government cannot be good unless such power is exercised with judgment, discretion, and rectitude. Each elector should consider the claims of a proposed representative in the light of the work, local or central, which he will be called upon to do.

§ 72. **The Party System.**—In practice Parliamentary elections proceed on party lines: the nation is called upon to decide, not so much between men with varying personal claims, but between two great parties (with other smaller ones) each of which puts forth its own programme of the reforms in law and administration that it hopes to carry out.

The two great parties are the Liberal party, which believes in constant reform in the direction of securing freedom from social disabilities to all persons and classes, and the Conservative party, which prefers to retain things and institutions as they are until the need for change becomes obvious. Nowadays, however, the distinction between

these two parties is no longer very clearly cut: one can only say that the Liberals show on the whole a greater leaning in favour of reform and the Conservatives a greater degree of caution in political progress.

There are other parties of less importance; thus the Irish party, which puts the claims of Ireland before everything else, and the Labour party, of which the special object is to advance the interests of the working man, are both well represented in Parliament. But no such minor party has very much power, except through the support of one or other of the two great parties.

At Parliamentary elections the personality of the candidates often has little effect on the result; electors vote for A or B because he supports the Conservative or Liberal programme, not because he is A or B.

The party system secures continuity of policy and strong straightforward action on the part of the House of Commons. But it has its drawbacks. Party spirit often causes men to cry down measures coming from the opposite party, though they really believe that these serve the common good; and to support measures coming from their own party, though believing them to be bad.

This is frequently the case in the House of Commons. Whenever the Government of the day chooses to turn any legislative measure propounded by it into what is called a "question of confidence," the members of the party then in power are bound to support the Government if they do not wish to see Parliament dissolved as a consequence of the latter's defeat. Moreover, party government must involve some amount of weakness; for parties are too much occupied in abusing and hindering one another's policy to be able to combine together with the object of finding out what is really best for the nation, and doing this as well as it can be done.

On the other hand, the party system has worked very well in practice; and it has the advantage that for each suggested reform it provides a body of advocates and a body of critics, so that the good and the bad points of the proposal are thoroughly shown up to the nation, with whom it lies to decide whether the measure shall or shall not be carried into effect.

§ 73. **Public Health.**—The State, by various means, endeavours to secure sanitary conditions of life for its citizens; but it is clear that little can be done in this way without the willing co-operation of individual citizens. It is strictly true that care for health is one of the first duties of the good citizen, for its neglect strikes at the safety of the community itself. Contagious diseases are a menace to the whole State; and no disease, contagious or not, should be allowed to subsist if it can be prevented. Care for personal cleanliness and the sanitary well-being of the house are part of the whole duty of citizenship. Isolation in cases of infectious disease and disinfection of houses in which such cases have occurred are indeed legally obligatory.

But this is not all. A man may so live that his body is incapable of resisting the first attacks of insidious disorders. The intemperate or careless man not only impairs his own health, but endangers that of the community at large. So that every man, in his capacity as citizen, is under a moral duty to refrain from bad habits, to get fresh air and take exercise when possible.

§ 74. **Public parks**, gardens and other open spaces constitute the "lungs of a town." They provide opportunities of fresh air and exercise, and thus rectify to some extent the necessary evils of life in large towns. They afford to the poorest the means of recreation and enjoyment. Such open spaces are usually provided by the

town and paid for out of the rates. This is a growing form of municipal enterprise.

§ 75. **Education.**—Every parent can claim instruction for his children, and the law will punish those who, by neglecting to educate their offspring, fail to equip them for the battle of life. But no compulsion should be necessary. The parent ought to co-operate in the work of education by endeavouring to bring about the regular and punctual attendance of his children at school, so that they may obtain the full benefit of the education provided.

To the parent belongs, in the first place, the task of forming aright the character of his children. This is a duty to the community as well as to the child himself. It depends largely on home training whether a child grows up strong, honest, self-reliant, having such qualities as will make him of service to the State; or, on the other hand, weak, worthless, and vicious, ready to fall into crime and pauperism. It is of the utmost importance that a child should early be taught to follow honour, love truth, and be kind. These things are part of true education. The schoolmaster should help the parent in teaching them; for it is the function of the school to develop moral qualities, as well as to instruct the mind.

Benevolent individuals and public bodies have made it possible for the more brilliant children of the poor to pass by stages from the elementary schools to the universities. And there are all sorts of projects now on foot which have for their object the promotion of higher education among the working classes.

It must be remembered that the training of school or college is after all only the beginning of a citizen's education. From the point of view of the State, the end and aim of all education is to render men and women useful

members of society, and to incite them to employ their faculties for the benefit of the community.

§ 76. **Provision for the Poor.**—Every parish is charged with the duty of providing for its own poor, and for the better fulfilment of this duty parishes are grouped into unions, each having a workhouse of its own, or at least a share in a workhouse owned jointly with another union.

The various parishes in each union elect the guardians of the poor, whose function it is to administer the affairs of the workhouse, and generally to look after the relief of the poor in their district. Shelter in the workhouse must not be refused to any destitute person belonging to a parish within the district. In the matter of outdoor relief the guardians have a discretion, except that they must not grant such help to able-bodied workmen. By means of this organisation the moral duty of giving aid to the poor and needy is clothed with legal force, while at the same time the efficient distribution of the relief is assured.

§ 77. **Provision for Old Age.**—Poverty often arises through real misfortune; but in a great many cases it is caused by want of thrift. A large number of the wage-earners of this country make no provision for their own old age, with the consequence that when they can work no longer they have often to end their days in the workhouse, or to apply for outdoor relief. It is a moral duty of the citizen to save money, during health and strength, for his own support in time of sickness, accident, and old age.

There are various institutions, such as friendly societies, trade unions, old-age pension schemes made by private employers, post-office savings banks, and life insurance, whereby the performance of this duty is made easy and regular for those who choose. Schemes for the establishment by the State of a system of old-age pensions have

received a certain amount of political support from the great parties in the kingdom.

§ 78. **Public Spirit.**—The cultivation of a healthy public spirit is one of the first duties of a good citizen. He should be possessed with a desire to see the community flourish and progress, and should strive to place the public good before his own private welfare. And, in order that his patriotism may be a zeal according to knowledge, he should be quick to take advantage of the means of instruction upon public affairs which lie open to him.

In producing an instructed public opinion our constitutional freedom of speech and freedom of meeting are of the greatest value. These liberties open the way to the full and fair discussion of public questions. They vastly strengthen the power of the Press, which has a great control over the mind of the public. All events of public interest are carefully reported in the newspapers; in particular the proceedings of Parliament and other public bodies and the speeches of great public men are thus made known to the people. In this way each citizen is furnished with the material for forming a judgment of his own upon the questions of the day. The Press is ever ready to direct public attention to the reforms which are needed in the law, to the abuses to be found in administration, and to the evils that may exist in high places.

§ 79. **Service for the Common Good.**—It is not enough, however, for a man to take pains to think aright upon public questions. Good government cannot be secured without the *active* co-operation of the whole body of the people. The citizen who lives an entirely selfish life, neglecting his public duties and shirking service for the common good, has failed to grasp the true conception of his position as a member of a political community.

CHAPTER V.

LOCAL GOVERNMENT AND ADMINISTRATION.

§ 80. **Law and Administration.**—The duties and rights which belong to the citizen as a member of the State have now been enumerated, without special regard to the machinery of government whereby they are created and enforced. But an account of the duties and rights of citizenship would be incomplete if it did not describe the organisation and powers of the various bodies, central and local, which carry out the work of government.

It is not enough to set forth the position of a citizen, regarded simply as a subject of law. Many of the activities of modern communities are concerned with law only indirectly, their main object being to create and carry on institutions which provide benefits for the community generally; these activities do not involve the setting of any rule to the citizen beyond that he shall do his part towards their smooth working.

Amongst such activities as these, the enforcement of the law will take a very important place. And the same must be said of the means by which the law is made. The constitution and powers of the various institutions of government, central and local, will now be sketched. And the natural order of treatment seems to be to take the local institutions first, since they come nearer home to the average citizen than the more weighty institutions of central government.

§ 81. **Importance of Local Administration.**—To the sphere of local administration belong the lighting of the streets, the up-keep of the roads, the maintenance of a well-ordered sanitary system, the organisation of a force of police, security against false weights and measures, protection from infectious diseases, provision for free education, and many other valuable privileges of citizenship. In the life of the average law-abiding citizen questions connected with things like these often fill a much greater space than questions of war and peace, of crime and punishment, of Colonial administration, of the management of factories and workshops, lunatic asylums and prisons, and of the making and altering of the general law of the land, which are dealt with by Parliament and the central executive. These very important things generally stand at so great a distance from the citizen's personal sphere of action that he is apt to take them for granted. But the efficiency of local administration is a matter of immediate concern which should always awaken an active personal interest.

Each local organ has, as a rule, complete independence of action within a certain scope defined by the ordinary law of the land. It is true that local administration is supervised by central departments like the Local Government Board, but these do not prescribe action for the local body; they interfere only when the local body has palpably exceeded its powers or has been guilty of some flagrant piece of negligence. As the position has been clearly stated by Professor Jenks: "So long as the local authority does its best and keeps within the law, however mistaken that best may be, the central government has no right to interfere, even on the request of the persons suffering from the consequences of the mistake."[1]

[1] Jenks, *English Local Government*, p. 15.

As a consequence of this independence of action, local institutions differ widely from one another; so that it would be barely possible, while it would certainly not be desirable, to describe the position held by the citizen under local government in each district in England. All that can be done is to set forth the general features of local organisation. A citizen is entitled to all the benefits he may derive from the administration of his own locality, while he is bound to do all that may legally be required of him in the way of support and assistance to such local administration, as by yielding obedience to by-laws validly made, by serving on a local authority, if elected, and by paying rates for the maintenance of local institutions.

Constitutional Principles in Local Government.

§ 82. **Supremacy of Parliament.**—The fundamental principles of the Constitution, as set out in Chapter II., apply to local as well as to central government. Though there were in England at one time a number of local jurisdictions belonging to great lords, for many centuries the general law has been supreme throughout the realm. Now there is only one law, and from this all local rules of administration derive such validity as they may have. Thus a by-law made by a Town Council or other local authority cannot be enforced unless power to make the by-law has, by the general law of the land, been conferred upon the authority; and the by-law must satisfy the conditions laid down in the statute by which such power was given.

In all local as well as central affairs, Parliament is supreme, and if a local authority wishes to increase its powers, to extend its boundaries, or to alter its constitution, it has to go to Parliament, and to obtain what is known as a

Private Act. A great proportion of the annual Parliamentary legislation consists of such Private Acts. These pass through the ordinary stages of a Public Bill before becoming law. In addition, they are subject to certain special rules of procedure, made in order to secure due investigation of the nature of the proposed reform, and due representation to persons with whose interests it is likely to conflict. It is from these Private Acts, together with a few great general Acts dealing with local government, such as the Local Government Acts of 1888 and 1894, that local authorities derive their right to govern.

Authorities have only such powers as are given them by the law, and abuse of their rights will render them liable to punishment. But, as has been pointed out, the powers which are given to local authorities allow them a very wide range of free action. They can act only with the permission of Parliament, but the permission given is a very full one, "Thus an intense centralisation of the national will is combined with complete decentralisation of the business of carrying it out."[1]

§ 83. **The Powers of Government Departments.**—The work of supervising local authorities is entrusted to Departments of Government, such as the Local Government Board, the Board of Education, and the Board of Trade. By permission of Parliament, such Departments have the right to make Orders affecting local areas. But these Orders, again, are invalid unless they fall strictly within the powers given by Parliament. Moreover, Parliament exercises a direct control over the Departments, since the heads of these Departments are Ministers of State, dependent upon a Parliamentary majority.

§ 84. **The Rule of Law.**—It is as true for local officials and bodies as it is for the officials and bodies of the central

[1] Redlich and Hirst, *Local Government in England*, vol. ii., p. 332.

government, that there is no general exemption from the ordinary law; the Courts of law will not admit a defence which asserts merely that the body or person whose action is complained of acted as a local authority, or as the agent of such an authority.

No exemption will here be recognised which is not given by law, and there are very few exemptions which the law does give. The most important instance is the immunity created by the Public Authorities Protection Act, 1893, which enacts that no action or prosecution against any person for any act done in the execution, or intended execution, of a public duty shall lie unless it is commenced within six months of the act complained of. The general object of this statute is to discourage vexatious actions against persons engaged in carrying out public work.

§ 85. **Central Audit of Accounts.**—In financial affairs, a close supervision is exercised by the Local Government Board over every local authority except Town Councils. The country is mapped out into districts, to each of which an officer, called a District Auditor, is appointed by the Local Government Board. This officer examines on the spot the accounts of every local authority within his district, except the Borough Councils.

The Auditor may disallow any item which he considers to be unwarranted or excessive, and, further, he has power to surcharge any person who has directed an illegal or improper payment with the amount of the sum mis-spent. This means that the person responsible for the wrongful expenditure of local moneys will have to make it good out of his own pocket. An appeal lies to the Board from the decision of the Auditor, and often, if his mistake is an honest one, the person surcharged will be excused the repayment.

The Organisation of Local Government.

§ 86. **The Local Government Board.**—The Local Government Board is supreme over all local authorities; it exercises a general "paternal" supervision over their conduct. The Board consists of a President and a number of Ministers of State sitting *ex officio;* in practice it never meets, but the President directs the work and is responsible to Parliament. The Board gives advice to governing bodies who ask it. It makes orders and rules for the governance of local affairs, and it may disallow by-laws made by local authorities; it has great powers of interference, especially as regards District Councils, and it audits local accounts. It appoints Inspectors who inquire into the way in which the various authorities do their work, and report their conclusions to the Board. The Board can, by Order, alter the boundaries of Poor-law Unions and Sanitary Districts.

§ 87. **Organisation of the County.**—The whole of England and Wales is divided into administrative counties, each of which has its own County Council. These counties are sixty-three in number; they do not necessarily correspond with the old geographical counties.

Each administrative county is subdivided into county districts, which may be either "urban" or "rural." A county district has its own District Council; in *rural* districts the members of the District Council also constitute the Board of Guardians, whose duty it is to provide relief for the poor within the district.

§ 88. **The Parish.**—Rural districts are further subdivided into parishes. It is necessary to distinguish these parishes, called "civil" parishes, from the old ecclesiastical parishes; the latter areas consist in the dwelling-place of a priest, and the district surrounding it, to the spiritual needs of

which the priest ministers. A civil parish is "a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed."[1] That is to say it is a separate district for the administration of poor relief; in some cases, but by no means in all, this district will be the same as the ecclesiastical parish.

All rural parishes have a Parish Meeting of their own, and the larger ones have also Parish Councils of their own. Urban districts are also subdivided into parishes, but here, for purposes of local government, the parish is unimportant.

§ 89. **The Borough.**—Finally, outside the general organisation of the county, come the boroughs with their Town Councils; these towns are largely self-contained and self-governing, though for some administrative purposes they form part of the county. We shall now trace out the constitution and functions of the various local governing bodies, from the lowest range upwards.

Government of the Rural Parish.

§ 90. **The Parish Meeting.**—As has just been said, every rural parish has a Parish Meeting. This is an assembly of the parochial electors;[2] it must meet at least once a year for what is called an "annual assembly." A Parish Meeting must not be held before six o'clock in the evening; this rule makes it impossible to exclude working men by holding the meeting in the daytime, as was sometimes done under the system in force before 1894.

The chief privilege of the Parish Meeting is its power of putting in force what are known as Adoptive Acts, *i.e.*

[1] *Interpretation Act*, 1889.

[2] These persons are "the persons registered in such portion either of the local government register of electors or of the Parliamentary register of electors as relates to the parish."—*Local Government Act*, 1894, sec. 2. They include owners not resident in the parish,

Acts of Parliament under which local authorities may, at their own option, obtain certain special powers. Such statutes, if adopted by the Authority, give power to make provision for lighting and watching the parish, and for establishing baths, wash-houses, burial grounds, recreation grounds, and public libraries.

The Parish Meeting has some control over the parish property, and can prevent any highway within the parish from being stopped up or diverted. Where there is no Parish Council, the Meeting appoints the overseers of the poor for the parish, and it can levy a rate up to sixpence in the pound. Where there is a Parish Council this is elected by the Parish Meeting; and the consent of the Meeting is required to the levy of a rate exceeding threepence in the pound by the Council.

§ 91. **The Parish Council.**—In addition to the Parish Meeting every parish with a population of 300 or upwards *must* have a Parish Council; while every parish with a population of between 100 and 300 *may* have a Parish Council, all that is necessary being a resolution of the Parish Meeting to the effect that there shall be one. In parishes with a population of under 100, the County Council may establish a Parish Council if it thinks this desirable, but only with the consent of the Parish Meeting.

A Parish Council consists of a chairman, and from five to fifteen councillors, the number being fixed by the County Council; these councillors, who must be parochial electors,[1] are elected by the Parish Meeting, and hold office for three years. The Chairman is elected by the Council itself.

The Parish Council has a large number of powers. Thus

[1] Or other persons resident for a year within three miles of the parish.

it appoints overseers of the poor, and it may make and maintain allotments, *i.e.* pieces of land rented out in plots to small cultivators. The parish property is vested in the Parish Council. The Council may provide parish offices, books, fire-engines, and recreation grounds, may manage and improve village greens and other open spaces, may furnish a water supply and repair public footpaths. It administers the Adoptive Acts, though these can be put in force only with the consent of the Parish Meeting. The consent of the Council is required to the stopping up and diversion of any highway. It can levy a rate up to threepence in the pound, or, with the consent of the Parish Meeting, up to sixpence in the pound.

§ 92. **Audit of Parish Accounts.**—The accounts of every Parish Council, and also of every Parish Meeting, are made up every year, and audited by the District Auditor appointed by the Local Government Board.

Government of the County District.

§ 93. **The County District.**—By the Local Government Act, 1894, all counties were divided into districts, each containing a number of parishes. As far as possible the areas of existing Poor-Law Unions were taken as the basis for the new districts; but care was exercised to keep separate rural and urban districts, and also to prevent any district from overlapping more than one county.

§ 94. **The District Council.**—Each county district, rural or urban, has a District Council of its own. A District Council is a body corporate, which means that it is one person in the eye of the law; and so it can sue and be sued, and hold land, as a unit distinct from the persons who compose it. As a token of its individuality it has a

Common Seal, with which it seals all deeds and other documents to which it is a party.

District Councillors are elected for a term of three years; one-third of the members of the Council retire every year and an election is held to fill their places. The retiring members may, however, be re-elected. Each parish with a population of over 300 has at least one member.

The electors in each parish are those persons whom we have already mentioned under the name of "parochial electors" as having a right to be present at the Parish Meeting, and any parochial elector may be elected a District Councillor.[1] A woman can vote at the election of a District Councillor, and a woman may be elected a District Councillor.

The Councillors elect a chairman who becomes, by virtue of his office, a justice of the peace for the county; but a woman elected chairman cannot act as a justice of the peace. Six months' absence from meetings on the part of a Councillor vacates his seat.

§ 95. **Functions of the District Council.**—The District Council has important powers and duties. It must look after sewerage and drainage. In an urban district it may, and in a rural district it must, see to the provision of a water supply. It regulates common lodging-houses within its district, and prevents and removes nuisances. It carries out the provisions of the Act relating to the housing of the working-classes. It must take steps for the prevention of infectious diseases, and may construct and maintain hospitals. It appoints two sanitary officers: one is the

[1] So also may any person resident for twelve months within the district—or, in the case of Rural District Councils, resident for twelve months within the Union in which the rural district is situated.

Medical Officer of Health, whose duty is to advise the Council on sanitary matters, and generally to look after the health of the district; the other is the Inspector of Nuisances, who must deal with all nuisances arising in the district. Both these officers have power to condemn and seize any unwholesome meat, milk, bread, or other food exposed for sale within the district. Many of these sanitary powers, however, are not required in rural districts, and therefore have not been conferred upon Rural District Councils. But a Rural Council will, speaking generally, have the same powers as an Urban Council in respect of sewerage and drainage and the removal of nuisances.

As to roads within the county, the main roads and county bridges are entrusted to the care of the County Council, but all other highways are in the charge of the Urban or Rural District Council within whose area they come.

Any District Council may acquire land for allotments within its district, and may protect public rights of common, such as the right of persons belonging to a parish to use the village green.[1]

Every District Council has power to make by-laws for the government of the area which it controls. These by-laws must comply with certain conditions. They must be made under the seal of the Council and advertised and published in a certain manner; they must also be approved by the Local Government Board. A penalty not exceeding £5 may be imposed for each breach of a by-law.

A District Council has also a number of miscellaneous powers, including the provision of museums, gymnasiums, and public libraries under the Adoptive Acts, when the Council chooses to put these in force.

[1] For this purpose, however, the consent of the County Council is required.

§ 96. **District Finance.**—In order to meet the expense of carrying out its duties, the District Council (through the County Council) receives grants of money from the Treasury, and it has various other small permanent sources of income. But these means are never sufficient to enable the Council to pay its way; and therefore it has to levy a rate, called a "general district rate." This is imposed on property within the district, by way of a certain percentage on the annual value. The Urban District Council raises its own rates; the Rural District Council makes a demand upon certain officials of parishes within its district, called overseers, and these overseers raise the money and pay it over to the Council. The expenses of a Rural District Council are divided into "general" and "special": the latter are incurred in the interest of particular areas within the district, and are a special charge on the parishes benefited by them.

District Councils are under the close supervision and control of the Local Government Board, which may compel them to perform their duties. The Board, through its District Auditors, conducts an annual audit of the accounts of the Councils.

The Poor-Law Union.

§ 97. **The Union District.**—For the provision of relief for the poor by the establishment of workhouses, and by other means, the country was long ago (1834) divided into Unions, formed on the principle of combining together a number of neighbouring parishes. It has already been said that in 1894 these Unions were taken as the basis for the construction of county districts; but a Union is not necessarily the same as a county district, for it may include more than one such district.

§ 98. **The Board of Guardians.**—The administration of Poor-Law relief throughout the Union is entrusted to Boards of Guardians. In a rural district the District Councillors are themselves the Board of Guardians, though the two capacities are kept quite distinct. In urban districts the election of the Guardians proceeds independently of the election of Councillors; here the two bodies are kept distinct in person as well as in capacity. The qualifications for electing and being elected a Guardian are, however, even in urban districts, the same as those which obtain in the case of a District Councillor.

§ 99. **Administration of Poor Relief.**—The duty of the Guardians is to provide for the relief of the poor. Every Union owns a workhouse, or a share in a workhouse belonging to it in common with other Unions. Indoor relief must be provided for those persons who, being connected with parishes within the Union, are in need of such relief. Outdoor relief cannot be demanded as of right; and such relief must not under any circumstances be granted to able-bodied workmen. The management of the workhouse is in the hands of the Guardians, who, with the consent of the Local Government Board, appoint the workhouse officials and the relieving officers and medical officers for the Union. It is also the duty of the Guardians to look after the registration of births and deaths in their district, and to see that the Vaccination Acts are properly carried out.

§ 100. **The Poor Rate.**—The money for these purposes is raised by means of a rate, called a "poor rate." The Guardians divide the whole sum of money they want between the various parishes of the Union, and address a demand to the overseers of each parish, calling upon them to raise the apportioned sum. The overseers then levy the "poor rate" by way of assessed percentage upon the

annual value of property within their parish, paying over the amount thus obtained to the Board of Guardians.

Government of the County.

§ 101. **The Administrative County.**—Under the Local Government Act of 1888 the whole of England and Wales is divided into sixty-three "administrative counties"; these do not necessarily correspond with the old geographical counties.

§ 102. **The County Council.**—A County Council is established for each such administrative county. Every County Council is elected once in three years as a whole, by persons known as "county electors," *i.e.* persons, male or female, qualified by belonging to boroughs within the county, or by fulfilling certain conditions of occupation, coupled with residence within seven miles of the parish.

Those qualified for the office of County Councillor include peers and Parliamentary voters owning property within the county, together with such persons as are eligible to be Town Councillors of boroughs within the county. No woman can be a County Councillor, though an unmarried woman may vote at a County Council Election.

County Councils consist of a certain number of Councillors, elected by the general body of voters for a period of three years, with Aldermen to one-third of that number, holding office for six years, and a Chairman. The Aldermen and the Chairman are elected by the Council itself.

§ 103. **Functions of the County Council.**—The County Council is entrusted with the creation and supervision of Parish and District Councils within the county. Its duties include the up-keep of county buildings and property, main roads and county bridges, pauper lunatic asylums, reformatories and industrial schools within the county.

It takes measures for stamping out contagious diseases in animals, for protecting wild birds and preserving fish; also for preventing river pollution. It grants licences for music, dancing, and race-courses; it sees that proper weights and measures are used within the county; it makes by-laws; and it levies rates, known as county rates, which are collected through the Boards of Guardians of Unions within the county. The County Council provides for technical education and it may construct "light railways." Moreover, it has recently been entrusted with the regulation of elementary education within the county. And the county police falls to the charge of a joint committee appointed by the County Council and the county magistrates.

Government of the Borough.

§ 104. **Constitution of the Borough.**—A borough is a town of which the inhabitants are incorporated by charter, *i.e.* by special privilege granted by the Crown; this gives them the right to govern themselves. Certain large boroughs, usually containing cathedrals, are called cities, but this is only a term of dignity; it does not denote the possession of any special rights or powers. There are now over 300 boroughs and cities in England and Wales. Many of these boroughs have been incorporated for a very long while.

From the time of the Plantagenet kings each borough had the right to send two representatives to the national Parliament. At the beginning of the nineteenth century, however, it was found that the existing boroughs of the kingdom had fallen into a state of utter corruption. In 1832 a great Reform Act took away the right to Parliamentary representation from a large number of small boroughs, which had fallen under the influence of great families established

within the [illegible] or had been in the habit of selling the right to represent them to the highest bidder. In the next year a Commission was appointed to inquire into the way in which the boroughs managed their own local affairs. As a result of the report of this Commission the Municipal Corporations Act, 1835, was passed; this provided a model constitution for the local government of boroughs.

The Municipal Corporations Act, 1882, abolished certain boroughs and made the model constitution, with some amendments, apply uniformly to the rest, so that the legal definition of a borough now is "any place for the time being subject to the Municipal Corporations Act, 1882." These Acts do not, of course, take away the right of Parliament to grant additional powers to any borough by special Acts; and so by virtue of local statutes many boroughs possess privileges not given by the Act of 1882. Still that Act is the general model to which the constitution of boroughs throughout the kingdom now conforms.

§ 105. **The Parliamentary Borough.**—Less than half the boroughs now return members to Parliament, and in those which do the parliamentary area does not necessarily correspond with the ordinary borough area. A freeman of a borough, that is, a person admitted to membership under the old rules, has the right to vote at a parliamentary election,[1] but cannot as such take part in the election of borough officers. The freedom of a borough now derives its chief importance from a usage that has grown up of conferring it by way of compliment on distinguished persons whom the borough chooses to honour. It is the highest compliment that the borough, in its corporate capacity, can confer. Honorary freemen, however, acquire no rights in the borough by the grant of freedom.

[1] *I.e.* if he has acquired his freedom by birth or apprenticeship.

§ 106. **The Borough Corporation.**—The Corporation of a borough consists of the Mayor, Aldermen, and burgesses.[1] A "burgess" is any person occupying a house, warehouse, shop, or other building in the borough, and resident within seven miles of the borough.[2] A burgess has the right to vote for the election of Town Councillors, the right and the duty of serving in any municipal office when elected, and the duty of serving on borough juries if chosen to do so.

§ 107. **The Town Council.**—The government of a borough is in the hands of a Town Council, consisting of the Mayor, the Aldermen, and a number of Councillors elected by the burgesses from amongst persons who are burgesses themselves.[3] A single woman, or a widow, qualified as a burgess, may vote, though this right does not extend to married women; no woman can serve as a Town Councillor. One-third of the Councillors retire every year, and new elections are held on the 1st November to fill their places; a retiring Councillor is eligible for re-election.

In many boroughs the election is conducted on party lines. Where this is so, the two great parties in the country regard the local elections as a means of testing the state of political opinion in the country; but when the Councillors have actually been elected, political

[1] In a city the burgesses are called "citizens."

[2] It is a common error to suppose that the Corporation is identical with the Town Council, which consists of the Mayor, Aldermen, and a certain number of Town Councillors elected by the burgesses; for while the government of the borough is in the hands of the Town Council, in the eye of the law it is the Mayor, Aldermen, and the whole body of burgesses which make up that artificial person called the Corporation.

[3] Or, being otherwise qualified as burgesses, are resident within fifteen miles of the borough, though not within seven miles, as is required for a burgess.

differences tend to disappear,—in other words, the Council usually deals with questions of local administration on non-party lines.

Each Borough Council has Aldermen to the number of one-third that of the Councillors; these Aldermen are elected by the Council at an ordinary meeting for a term of six years. One-half of them go out of office at the end of every three years, and then a fresh election takes place; in some boroughs there is a tendency not to oppose outgoing Aldermen if they desire re-election. Aldermen have no special rights or privileges, except that they sit for six years instead of three; their rank gives them greater dignity, but nothing more.

The Mayor is the official head of the Corporation, taking precedence of all other persons within the borough. It is his duty to dispense hospitality on behalf of the borough, and generally to represent it on all public occasions; he is *ex officio* a magistrate for the borough, as is also the ex-Mayor. He acts as chairman of the Town Council, and in this capacity, since the Town Council is the Urban District Council for its district, he is also a magistrate for the county.

§ 108. **The Town Clerk.**—Every borough has a paid officer, called a Town Clerk, who holds office permanently unless the Council sees fit to dismiss him. It is his duty to keep all the charters and other documents of the borough. He convenes the Town Council and acts as secretary during its meetings; he advises the Council on legal points, and on account of the permanence of his connection with the borough he can do a great deal to ensure the smooth working of the borough machinery.

§ 109. **Functions of the Town Council.**—The Town Council has the following powers and duties :—

(1) *Sanitary.* The Town Council is the Urban District

Council for its area, and in this capacity has all the ordinary powers of such a body, *e.g.* as regards drainage, water supply, highways, lighting, infectious diseases, museums, gymnasiums, and public libraries.

(2) *Educational.* If the borough has a population of over 10,000, the Council is now the local education authority for elementary education.[1]

(3) *Proprietary.* The Council has control of the borough property, and it can buy land for any borough purpose; though if the land to be bought is more than five acres in area, the consent of the Local Government Board must first be obtained. The Council may build a Town Hall or any other municipal building.

(4) *Police.* All boroughs which in 1881 had more than 10,000 inhabitants have a separate police force. This is managed by a committee of the Council, called the Watch Committee. The force is paid by the Town Council; but if it comes up to a certain standard of efficiency the County Council contributes one-half the cost.

(5) *Legislative.* The Council has the power to make by-laws for the good government of the borough. These must be approved by the Local Government Board, or in some cases by the Home Secretary; and they must fulfil certain other conditions.

(6) *Financial.* The Council levies rates to meet its expenditure for borough purposes, which are called "borough rates" or "general district rates." The Council assesses the amount to be levied on each parish in the borough, and the rate is collected by the overseers of the parish.

[1] See Chapter VI.

CHAPTER VI.

THE ORGANISATION OF ELEMENTARY EDUCATION.

§ 110. **Elementary Instruction. Compulsory Education.**—Public elementary schools are now established throughout the country, and it is the duty of the parent of every child between the ages of five and thirteen to cause such child to receive efficient elementary instruction. Elementary instruction at first did not go beyond reading, writing, and arithmetic, but it is now defined in a Code issued by the Board of Education, and it embraces the subjects specified in that Code. The parent's duty is enforced through by-laws made by educational authorities;[1] and the law places restrictions on the employment of children under ten and of those who have not reached a certain standard of proficiency.

§ 111. **Free Elementary Schools.**—Since 1891 every school district has been required to provide a sufficient number of free places in a public school for children between the ages of three and sixteen. Free elementary education is thus secured by the State for those children whose parents are unable to meet the expense of providing the requisite instruction.

[1] The Local Education Authority is bound by law to make by-laws for the enforcement of attendance at school; and if it should neglect to do this, by-laws may be made for it by the central authority.

§ 112. **Board Schools and Voluntary Schools.**—Before 1902 elementary education was furnished by "Board schools" and "Voluntary schools."

(1) *Board Schools* were public schools under public control, provided by the inhabitants of a district, managed by a Board elected by the ratepayers, and paid for out of the proceeds of taxation. As to the instruction given in these schools, a clause in the Education Act of 1870, known as "the Cowper-Temple clause," provided that "no religious catechism or religious formulary which is distinctive of any particular denomination shall be taught in the school." Hence while in many Board schools the Bible was taught, in none was instruction given in religious dogmas.

(2) *Voluntary schools* were schools, not under the control of a School Board, provided by private enterprise, usually on the part of religious bodies. The expenses of these schools were met partly by voluntary contributions, called "voluntary rates." Since 1870 the voluntary schools had been aided by grants made out of the public exchequer, so much money being given for each child found by Government inspection to be in a state of educational efficiency. But in order to earn its grant a voluntary school was required to satisfy certain conditions. It had to be worked under the "conscience clause," enabling a parent to withdraw his child from the religious instruction (if any) given, where he objected to this on conscientious grounds; and if religious instruction was given, the time set apart for this had to be at the beginning or end of school hours. A voluntary school would receive no financial aid unless it was open to Government inspection, and satisfied other conditions laid down by the Central Education Authority. But these voluntary schools were under private control, being governed by managers or trustees

appointed as provided for at the establishment of the school.

§ 113. **Powers of the School Board.**—In the case of districts served by School Boards it was the duty of the Board itself to make by-laws enforcing the attendance of children within the district. In the case of other districts this duty lay with a School Attendance Committee appointed by the Town Council or the Guardians of the Poor for the parish. The School Boards, in addition to the enforcement of attendance, had power to buy land for the purpose of elementary education, to acquire elementary schools by transfer from the trustees of voluntary schools, to call for returns of attendance, etc., from the managers of any such voluntary schools within their district, and to levy rates.

§ 114. **Funds for Elementary Education before 1902.**—The funds for the support of the elementary schools came from various sources: (1) "parliamentary grants," *i.e.* contributions made, out of money voted for the purpose by Parliament, to each school reaching a certain standard of efficiency, in proportion to the average attendance, (2) "fee grants" of ten shillings a head for each scholar paying no fees, (3) school fees where these were charged. These sources of income were available to Board schools and voluntary schools without discrimination.

Besides these (*a*) School Boards had power to levy a "school rate," which they did by demand addressed to the Town Councils of towns or overseers of parishes within their district. The Council or overseers collected the rate and paid it over to the Board. Moreover, under the Act of 1870, School Boards in poor districts received an extra grant from Government, which was increased by an Act of 1897; (*b*) voluntary schools obtained much support from

voluntary subscriptions, and in addition, under an Act of 1897, received a special "grant in aid" of five shillings a head for the number of scholars in average attendance.

§ 115. **The Education Act, 1902.**—The whole of the national system of education was completely reorganised by the Education Act of 1902 (with the London Education Act, 1903), the object of which is to co-ordinate all the authorities and to unify the whole system in much the same way as the Local Government Acts unified the system of local government. This Act abolished all School Boards and School Attendance Committees. Under its provisions the powers connected with the administration of education are variously distributed amongst the following authorities:—

I. The Board of Education.—This is composed of a President, the Lord President of the Council, the principal Secretaries of State, the First Lord of the Treasury, and the Chancellor of the Exchequer, with two Secretaries, one of whom is eligible for a seat in Parliament.

The Board, assisted by a consultative committee of eighteen appointed by the President for six years, exercises a general control over the action of the other authorities. Thus (1) it is to advise the local education authority in respect of higher education, (2) to arbitrate in disputes as to the necessity for new or existing schools, (3) to amend trust deeds when necessary, and (4) to examine schemes submitted by local education authorities as to the constitution of their education committees.

II. The Local Education Authority.—For purposes of higher education, *i.e.* all education other than elementary, this is always the County Council. For purposes of "elementary education," *i.e.* education for children up to sixteen or seventeen within the limits of the Code

issued by the Board of Education,[1] the Local Authority is the County Council in counties, the Town Council in boroughs with a population of over 10,000, and the Urban District Council in urban districts with a population of over 20,000.

The Local Education Authority is the rating authority, and has throughout its area "all the powers and duties of a School Board and School Attendance Committee"; and so it is its duty to see that all children within the district receive elementary instruction. As regards "non-provided schools" (the old voluntary schools), however, its powers are limited to the control of the *secular* part of the education given, and it cannot interfere with the discretion of the managers as to the *religious* part.[2] It is, if a County Council, "to supply or aid the supply of education other than elementary and to promote the general co-ordination of all forms of education."

The expenses incurred by the Local Education Authority are, speaking generally, to be paid out of the county fund,

[1] In the famous Cockerton judgment, 1901, which arose out of the action of a Local Government Board auditor who disallowed expenses incurred in paying a drawing master for teaching day art classes, and in paying a science master for teaching evening science classes in Board schools, it was held that such teaching could not be paid for by the School Board out of the rates. The Court of Appeal defined "elementary education" as in the text, and defined an "elementary school" as a school where the principal part of the instruction given was elementary education.

[2] In the case of *the King v. West Riding County Council* the Court of Appeal has recently decided that the Local Education Authority is not bound to pay for the giving of religious instruction in non-provided schools. This decision has caused some commotion, as it had previously not been doubted that the Local Authority was liable to supply funds for the religious as well as for the secular part of the instruction given. The case will doubtless be carried on appeal to the House of Lords.

the borough fund or rate, or the poor rate, according as the Local Education Authority is itself a County Council, Borough Council, or Urban District Council.

Every Local Education Authority is to establish—

III. An Education Committee.—In general a majority of the members of this must be appointed by the Local Education Authority from its own members; as to the other members of the Committee, provision is made in the Act for the representation of outside interests, and it is enacted that women may be appointed. The Committee is to consider all matters relating to the exercise by the Local Education Authority of its powers (except the raising of rates and loans), and to report to the Authority thereon; and any of the powers of the Authority (except its financial powers) may even be entirely *delegated* to the Committee.

IV. The Managers.—As a rule, each school is to have a separate body of managers, six in number. These are to be appointed as follows:—

(*a*) In the case of "provided schools" (the old Board schools): (1) where the Local Education Authority is a County Council, four are to be appointed by this authority, and the other two by a body called "the minor local authority," *i.e.* the Council of the Borough, Urban District, or Parish which is specially served by the school; (2) where the Local Education Authority is itself a Town Council or an Urban District Council, all the six managers are to be appointed by that Authority.

(*b*) In the case of "non-provided schools" (the old voluntary schools) four managers are to be appointed in accordance with the provisions of the trust deed of the school, and the other two by the Local Education Authority; except where this authority is a County Council, when only one is to be appointed by the County Council, and the other by "the minor local authority."

The managers have the immediate control of the school. Where this is a "provided school," they are entirely subject to the Local Education Authority in the exercise of their discretion. Where, however, the school is a "non-provided" school, they are invested with the function of upholding the religious tenets of the school independently of the Local Education Authority.

In this case, though they must obey the instructions of the Local Education Authority as to the secular instruction to be given, they act independently of that Authority as to *religious* instruction, which they are to maintain in accordance with the provisions of the trust deed. Hence they have the right to appoint and dismiss teachers, subject to the consent of the Local Education Authority; and such consent must not be withheld except on educational (*i.e.* non-religious) grounds.

The managers of a non-provided school must furnish the school-house to the Local Education Authority free of charge, and keep it in repair, except as to fair wear and tear, which must be made good by the Authority.[1]

§ 116. **Funds for Elementary Education at the Present Day.**—The Act of 1902 has made no change in regard to the Parliamentary grant and the fee-grant, which now go to the Local Education Authority. It has abolished the

[1] At the time of writing there is before Parliament an important Education Bill which may be expected shortly to become law. When this happens the organisation of Elementary Education, as sketched in the text, will be greatly altered. There will be no schools recognised as public elementary schools except provided schools; in the case of voluntary schools the Local Education Authority may arrange with the managers for the use of the school-house. In these schools religious instruction will be given only on a certain number of days in the week, to children whose parents desire it; though provision is made for the granting of "extended facilities" for religious instruction in some cases.

grant-in-aid formerly given to voluntary schools, and the extra grant made under the Acts of 1870 and 1897 to School Boards in needy districts. For these the Act has substituted the payment out of the Exchequer to *every* Local Education Authority of a sum equal to 4s. a scholar, together with a large additional sum which will vary inversely with the wealth of the area governed by the authority. This system ensures the receipt by the poorer districts of a proportionally large amount of aid from the Exchequer.

Further money required for educational purposes must be obtained by means of a rate levied by the Local Education Authority. The Authority apportions the total sum it requires among the various boroughs and parishes within its district, and issues a demand for the allotted portion to the Town Council in boroughs, and the Overseers of the poor in parishes. The rate is then raised as part of the poor-rate, and the sum realised is paid over by the Council or the Overseers to the Local Education Authority.

CHAPTER VII.

CENTRAL GOVERNMENT AND ADMINISTRATION.

§ 117. **The Legislative, Executive, and Judicial Functions.**—Following out our description of the machinery of government from the lower ranges upwards, we now come to the central organs.

In every modern community we find an organ, such as the Parliament (including the King) in England, which expresses the will of the community with regard to the conduct of its members, through the medium of general rules called laws. These *legislative* functions fill a very large place amongst the activities of present-day States.

In order that such general rules of conduct shall be enforced among its members, it is necessary for the State to set up judges, with a whole system of machinery, including policemen, gaolers, etc., ready to their hand. These judges will do justice according to law between individual citizens making claims against one another, and will punish persons who violate the rules contained in the criminal law, enacted by the State for the protection of the community as a whole. Hence it will lie with them to interpret the statutes passed by the legislature. These functions are known as *judicial.*

Finally, the State is concerned not only with the regulation of the conduct of its individual members; it has also certain positive lines of conduct of its own, on which it must act as an organised whole if it is to maintain its

existence and secure the greatest possible good for the people. It must be prepared in case of necessity to defend itself against attack on the part of other States, and for this purpose it must furnish itself with a navy and an army; it must collect its revenues, provide for the inspection of factories and workshops, build and maintain prisons, establish a diplomatic service, and exercise a certain supervision over the affairs of any colonies it may have. Moreover, many modern states carry on business enterprises, such as posts and telegraphs, railways, etc. All these functions are known as *executive*.

§ 118. **Relations between Parliament and the Executive.**—The supreme *legislative* authority in England is the King-in-Parliament, *i.e.* the King with the House of Lords and the House of Commons. In practice, the Commons play the chief part in the work of legislation. The functions of the Lords are mainly confined to criticising the action of the Lower House, and the Crown never now withholds assent to a legislative measure regularly passed by the two Houses.

The head of the *executive* is the Crown. The Crown, however, can express its will only through its Ministers of State, who, by taking part in acts of the Crown, become responsible for them. The ultimate carrying out of the executive work of the realm is entrusted to permanent officials—civil servants, soldiers, policemen, inspectors, postmasters, and others—but at the head of each branch of the public service is a Minister, nominally appointed by the Crown. In fact, however, the actual choice lies with the Prime Minister, who selects the other Ministers from among the members of the party for the time being in power in the House of Commons. The Ministers are collectively responsible to Parliament for the whole policy of the realm, and each separate Minister is responsible to

Parliament for the good administration of his own department. If the House of Commons disapproves of the policy pursued by the Prime Minister and his colleagues, it has ways of making it impossible for them to carry on the government of the country; in this case they will have to resign, and other Ministers, who do possess the confidence of the House, will be appointed. As the King can govern only through his Ministers, it is necessary for him to act as his Ministers advise.

The result of this somewhat complicated system is that, while the King is nominally head of the executive, and all executive acts are carried out in his name, yet in practice the supreme control is exercised by the House of Commons. But the House of Commons, in its turn, cannot neglect the opinion of the nation at large; for at a general election, which can never be deferred indefinitely, the electors of the kingdom will have the opportunity of expressing their verdict on the policy of the Government, and if they disapprove of this policy, they can elect fresh representatives who will deal with the affairs of the country as the electors wish.

The Crown.

§ 119. **Tenure of the Crown.**—The Crown is now held under a title created by statute: the King occupies the throne as the premier living descendant of Sophia, Electress of Hanover, who was established as the stock of descent by the Act of Settlement in 1701.

It is provided by statute that the Sovereign must not be, become, or marry a Papist, and that he must be a member of the Church of England. He is required to make a declaration against the Roman Catholic doctrine of transubstantiation, and to take an oath to govern well, to do justice, and to maintain the Church.

§ 120. **Allegiance and Naturalisation.**—All British subjects owe a duty of faithfulness to the Crown, known as allegiance. This duty extends to foreigners resident within the realm; though, of course, only while the residence lasts. There are certain ways provided by statute in which foreigners may become naturalised,[1] *i.e.* may be made British subjects; upon naturalisation they acquire all the rights and liabilities of natural-born British subjects.

In the absence of naturalisation, foreigners are debarred from the franchise, from the right to sit in Parliament, and from other political privileges; but they have all the private rights of a British subject, except that they cannot hold shares in a British ship.

The House of Lords.

§ 121. **The Three Estates of the Realm.**—The three orders into which the people of the kingdom are divided in political theory are known as "the three estates of the realm." The Crown is not an estate of the realm; for, in the eye of the law, it is *over* the realm rather than part of it. The "three estates of the realm" are the Clergy, the Lords Temporal, and the Commons. The clergy as a separate order are represented in Parliament only by the Lords spiritual—the two Archbishops, with twenty-four Bishops—sitting in the House of Lords, while the Commons of the realm (including the lower clergy) elect representatives to the House of Commons.

[1] The most common mode of naturalisation is by certificate of naturalisation from the Home Secretary. This may be granted after five years' residence in the British dominions, provided the applicant intends to continue such residence.

§ 122. **Constitution of the House of Lords.**—All peers of the United Kingdom have a right to sit in the Lords. The Scottish peerage is represented by sixteen representative peers elected for each Parliament, and the Irish peerage by twenty-eight representative peers elected for life.

In addition to the Lords spiritual and temporal, the House of Lords includes Lords-of-Appeal-in-Ordinary, who are persons of high legal standing, to the number of four, appointed by the Crown at a salary of £6000 a year, to help in hearing the appeals which go to the Lords; they have a right to sit in the House of Lords for life.

§ 123. **Functions of the Lords.**—The House of Lords is a necessary party to legislation; no Bill can become an Act of Parliament without its consent. The House also exercises important judicial functions. Thus it tries peers who are accused of treason or felony, and it is the highest Court of Appeal in civil cases. Every peer has a right to sit at the hearing of an appeal; but by custom of the House only those peers who have held high judicial office, with the Lord Chancellor and the Lords-of-Appeal-in-Ordinary, actually take part in these civil cases.

§ 124. **Privileges of Peerage.**—All peers have titles of honour, and a certain rank and precedence; they have a right to be tried by peers in case of treason or felony, and to give their counsel and advice to the Crown in person. The House of Lords as a whole has certain privileges, such as freedom from arrest when Parliament is sitting, freedom of speech, the right to exclude disqualified persons, and the right to commit persons for contempt.

§ 125. **Relations between Lords and Commons.**—Though in theory the House of Lords possesses the same rights in respect of legislation as the House of Commons, yet in practice the share of the Lords is comparatively small. They cannot constitutionally initiate or amend Money

Bills, while a very critical situation would be created by an attempt on their part to reject such Bills. All Bills of great political importance originate in the Commons, though sometimes reforms of real value, but not of a nature to awaken party feeling, are carried out by Bills which come from the Lords.

When a Bill is sent up from the Commons, the House of Lords is at liberty to reject it; but if the measure is an important part of the Government programme, such action may lead to a serious conflict. It is open to the Government to dissolve Parliament and to appeal to the country; and if, as the result of such appeal, the party in power is again returned with a majority in the Commons, it is an understanding of the Constitution that the Lords must give way. With regard to measures of small importance the House of Lords has practically a free hand. Thus it has more than once thrown out a Deceased Wife's Sister Bill.

The House of Commons.

§ 126. **Constitution of the House.**—The real power in legislation lies with the House of Commons. This House consists of 670 members—495 from England and Wales, 72 from Scotland, and 103 from Ireland. These members are elected by constituencies, *i.e.* local divisions of the country.

§ 127. **The Franchise.**—The qualification of an elector is the ownership of land of a certain value, or the occupation (whether as a dwelling-house or for business purposes) of land or buildings worth £10 a year for which rates have been paid, or the inhabitancy of a dwelling-house (of whatever value) for which rates have been paid, or the occupation as lodger of lodgings worth at least £10 a year unfurnished. The first qualification applies only to

county constituencies, while the others apply both to county and borough constituencies.

The Universities of Oxford, Cambridge, Dublin, and London, with Edinburgh, Glasgow, St. Andrews, and Aberdeen, have also a right to return representatives to Parliament. In these constituencies the electorate consists of members of the university who have attained a certain standing.

§ 128. **Disqualifications for Franchise.**—Some persons are disqualified from exercising the right to vote, known as the franchise, *i.e.* women, infants, peers, foreigners, lunatics, idiots, persons convicted of crimes of a certain gravity, bankrupts, and persons in receipt of poor relief.

§ 129. **Disqualifications for Membership of the House.**—Most of these persons are also disqualified from being elected as members. In addition there are certain other grounds of disqualification for membership, such as holding certain offices under the Crown (*e.g.* a judgeship), receiving pensions from the Crown, and entering into Government contracts; clergymen are also disqualified for membership.

§ 130. **Functions of the Commons.**—The real political power in the realm belongs to the House of Commons. The bulk of the work of legislation is in its hands, it exercises control over the conduct of executive affairs, and in practice it has the sole regulation of the finances of the country. But the party in power in the House is itself dependent for support on the opinion of the country, as expressed by the electorate at General Elections.

§ 131. **Legislation.**—Important legislative measures are initiated by the Cabinet and submitted to the House of Commons, which considers and discusses them, though almost always from a party point of view. Still, even such measures as these, called "Government Bills," are often

altered in the House, though the Cabinet may make any particular provision "a question of confidence," when the members of the Government party will find themselves bound to support the provision, unless they are prepared to see the Government resign.

Private members may also bring in Bills; but the practical difficulties which stand in the way of a Private Member's Bill, mainly arising from the great demands made by the Government on the time of the House, are so great as to make the amount of such legislation actually carried through very small.

Each Bill must be read three times in the Commons. After the second reading it passes through a "Committee stage," during which its clauses are discussed in detail and amended or otherwise dealt with as the House sees fit. After it has received its three readings in the Lower House, the Bill is sent to the House of Lords, where it is subjected to a similar procedure.

If the House of Lords introduces any changes into the Bill, it must be sent back to the Commons, who may accept or reject the amendments thus made. If these are rejected, the Bill goes back again to the Lords, and there is a deadlock until the two Houses come to an agreement on the matter. If, however, as is usually the case, the House of Lords makes no change in the Bill, it is then ready for the assent of the Sovereign, which is now always given as a matter of course. If the House of Lords rejects the Bill it is lost, unless the two Houses can be brought to an agreement.

§ 132. **Executive Functions.**—The House of Commons through the Ministers of State who form the Cabinet, exercises control over the conduct of the executive business of the country. The Cabinet, which is appointed from the party in power in the House, must continue to hold the

confidence of the House, or else it will find it impossible to carry on the work of government, and will have to resign office. Questions can be asked of any Minister with regard to the affairs of his Department, and the House is given full opportunity of criticising the action of any Minister.

It is by success in debate and other qualities exhibited in the work of the House of Commons that politicians come to the front as candidates for the great offices of State.

§ 133. **Management of Finance.**—The House of Commons exercises full control over the financial business of the nation, deciding what taxes shall be imposed and how the money shall be spent. As we have seen, the House of Lords is practically unable to interfere with the discretion of the Lower House in money matters.

CHAPTER VIII.

THE JUDICIAL SYSTEM.

§ 134. **Crimes and Civil Wrongs.**—From the point of view of the duties owed by the subject, the law of England falls into two great divisions, criminal law and civil law. There are certain duties which are imposed upon individuals for the immediate securing of the public interest, and the law which imposes these duties is called criminal. Other duties are imposed principally with the object of regulating the mutual relations of individual subjects—of preventing any man from violating his neighbour's rights to personal security, property, reputation, etc.—and these duties, in which the public interest is only indirectly concerned, come under the head of civil law.

The difference between crimes and civil wrongs is of some importance, because there are separate sets of courts, and a different procedure, established to deal with the two classes of cases. The practical test of a crime in English law has come to be whether it can be pardoned by the Crown, though there are one or two crimes that cannot be pardoned at all, *e.g.* a wrongful sending of a prisoner out of the realm contrary to the Habeas Corpus Act, 1679. Proceedings upon civil wrongs can always be discontinued by the individuals who bring the action.

Criminal Procedure.

§ 135. **Assizes and Quarter Sessions.**—The gravest crimes are tried before what are known as Courts of Assize, held by judges sent round the country for the purpose of hearing and deciding the civil and criminal cases which have occurred within a certain district. England is divided into eight of these districts, called "circuits," and twice or three times in the year the judges appointed to each circuit, attended by barristers, visit the chief towns of the district. The Assize Courts try cases of treason, murder, manslaughter, forgery, bigamy, perjury, libel, etc. They have authority to try all crimes.

In practice, however, the less serious crimes are generally tried by the Court of Quarter Sessions for the county. This Court consists of the county magistrates sitting at a quarterly meeting; of these at least two must be present in order to constitute the Court. In some cities and boroughs there is a local court of Quarter Sessions; and in these an official, known as a Recorder, being a barrister of a certain standing appointed to that office, is the sole judge.

§ 136. **The Jury.**—Assize Courts and Courts of Quarter Sessions each sit with two juries: a Grand Jury and a Petty Jury.

(1) *A Grand Jury* consists of any number of persons from twelve to twenty-three, who hear the evidence for the prosecution alone and then decide whether there is any case to go for trial. It is not necessary for this jury to be unanimous, but there must be a majority of at least twelve persons in favour of its decisions.

(2) *A Petty Jury* consists of twelve persons, who hear the case and return a verdict. The Judge advises this jury on points of law, arranges the facts in their

logical order, and sums up the whole case generally. The jury then consider the case and bring in a verdict of "Guilty" or "Not Guilty," upon which the Judge pronounces sentence or the prisoner is acquitted. No verdict of the petty jury will be a good one unless all the twelve members are unanimously agreed upon it.

§ 137. **Summary Jurisdiction of the Magistrates.**—Minor criminal cases are tried in a Court of Petty Sessions, which consists of two or more county magistrates sitting without a jury. For the purpose of this jurisdiction each county is divided into several districts, and it is usual, though not necessary, for a magistrate to confine his action to the Petty Sessional District in which he lives. Some boroughs have magistrates of their own, and in these boroughs it is not usual for the county magistrates to act. On the other hand, the borough magistrates have no jurisdiction outside their own borough.

These Courts of Petty Sessions try cases of cruelty to animals, breach of by-laws, omission to send children to school, petty assault, petty theft, etc.; though some such cases must be sent to Quarter Sessions or Assizes, unless the accused *consents* to be tried at Petty Sessions. A Petty Sessional Court has also a less important civil jurisdiction, *e.g.* in claims for poor rates, or disputes between employers and workmen.

Finally one magistrate, sitting alone, has jurisdiction over certain very small offences, *e.g.* drunkenness, but he can only inflict imprisonment not exceeding fourteen days, or a fine of not more than 20s., including costs.

§ 138. **The Course of a Criminal Trial.**—It is the duty of the magistrates not only to decide petty offences, as the cases tried summarily by them are called, but also to make a preliminary inquiry into accusations of graver crimes occurring within their district. In these cases, if they find

that there is sufficient evidence in favour of the charge, they must send the accused for trial before Quarter Sessions or Assizes, according to the nature of the offence. One magistrate, sitting alone, has power to conduct this preliminary examination.

When a case is sent for trial by the magistrate, a written accusation, called a "Bill of Indictment," is laid before the Grand Jury at Assizes or Quarter Sessions, which decides whether there is sufficient evidence for the prosecution to make out a case.

If the Grand Jury find that there is a case to be tried, they return what is called a "True Bill," and the trial proceeds before the Judge at Assizes, or the magistrates (or Recorder) at Quarter Sessions, sitting with a petty jury. Counsel appear on either side, witnesses for and against the prisoner are heard, examined by counsel on their own side, cross-examined by the opposing counsel, and finally re-examined by their own counsel once more. Since the Criminal Evidence Act 1898 the prisoner himself, and his wife, have been allowed to give evidence. But this is quite at the prisoner's option; he may refuse to give evidence, or to allow his wife to give it, and the opposing counsel must not comment upon such a refusal. After the witnesses have been heard, counsel on both sides then address the court, the Judge sums up, and the petty jury return their verdict. If the prisoner is found guilty, all that remains is for the Judge to pronounce sentence. This may be fine, imprisonment, or (in the gravest cases) death,[1] and will be carried out by the executive officers of the law.

[1] The capital penalty may be inflicted in four cases—treason, murder, piracy accompanied with violence, and setting fire to any ship in the King's dockyards or in the Port of London. In practice the penalty is confined to cases of murder.

§ 139. **The Coroner's Court** may here be mentioned. The coroner is an officer of a county or borough appointed by the County or Town Council, who sits with a jury of twelve persons to inquire into cases of sudden and violent death occurring within his district. The jury find a verdict as to the cause of death, and they must be unanimous. Proceedings may at once be taken before a Court of Assize or Quarter Sessions against any person charged with murder or manslaughter by the verdict of a coroner's jury; but in practice the ordinary procedure is generally followed.

Civil Procedure.

§ 140. **The Central Judicial System.**—We now come to the civil courts, whose duty it is to administer justice between subject and subject. The House of Lords is the supreme Court of Appeal in civil cases for the kingdom. Beneath this is a tribunal known as the Supreme Court of Judicature, which is divided into two courts, the Court of Appeal and the High Court of Justice; the former being, as its name implies, a court in which the decisions of the High Court of Justice can be re-considered on appeal. The Court of Appeal consists of the Master of the Rolls, who is president, and five Lords Justices.

The High Court of Justice has three divisions: (1) the King's Bench Division, consisting of fifteen judges, presided over by the Lord Chief Justice, (2) the Chancery Division, consisting of six judges presided over by the Lord Chancellor, and (3) the Probate, Divorce, and Admiralty Division, consisting of the president and one other judge. But the High Court is one court, not three, and these divisions are only arranged for convenience in transacting business. The Lord Chancellor is appointed by the Crown on the advice of the Prime Minister; the other

judges are appointed by the Crown on the advice of the Lord Chancellor himself.

§ 141. **The Courts of Assize** consist, as we have seen, of judges of the High Court, sent on circuit under commission from the Crown. Such courts try civil as well as criminal cases, and they are deemed to constitute courts of the High Court of Justice.

§ 142. **Appeals.**—The finding of any court upon a question of fact is final, but a question of law may form the subject of an appeal from the court which has decided it to the court immediately above it, *i.e.* from the High Court to the Court of Appeal, and from the Court of Appeal to the House of Lords.

§ 143. **The Course of a Civil Case.**—In civil cases, as in criminal, the parties may be represented by counsel, and if there is a jury (which is by no means always the case), its verdict must be unanimous. The judge gives judgment, fixing the amount of damages, if any, to be paid by the defendant, and making such order as shall appear to him just with regard to the costs of the action. It is usual to make the losing party pay the other's costs. But even so, the latter is never completely indemnified for his expenses in the case, since there are a number of items of expenditure, necessary in practice, which are not allowed to be charged.

§ 144. **County Courts.**—A number of courts in which minor civil cases are tried are now established throughout the land. These are called County Courts, and in their modern form they date from 1846. The judges are barristers of at least seven years' standing, appointed by the Crown on the recommendation of the Lord Chancellor.

For the purpose of County Court jurisdiction, the whole of England and Wales is divided into some fifty-nine areas,

to each of which a judge is appointed. This judge goes on circuit throughout his district, holding sittings at the various large towns within it. Generally speaking, he has power to try any claim not exceeding £50 in amount, though in some cases the limit is greater. Cases such as libel, slander, and breach of promise cannot be tried in a County Court at all. Many County Courts have jurisdiction in bankruptcy matters.

There is an appeal on any point of law from a County Court to the High Court; but, in accordance with the general rule, no appeal will lie on a question of fact.

CHAPTER IX.

THE ARMY AND NAVY.

The Army.

§ 145. **The Army Act.**—In England, owing to a clause in the Bill of Rights, the maintenance of a standing army in time of peace is unlawful. Still it is necessary for the safety of the realm that a standing army should be kept up; consequently each year Parliament passes a statute, known as the Army Act, which states the precise number of men that may be employed in the army, and makes rules for their government and discipline.

It is only by virtue of the annual Army Act that the Crown is able to enforce military discipline in the army at all. If there were no such statute, not only would the maintenance of the army be illegal in itself, but the Crown would have no means of enforcing discipline; for the relation between each individual soldier and the Crown would simply be that of servant and master under an ordinary civil contract, and an action for breach of contract would be a poor means of securing obedience to orders. But the Army Act makes soldiers "persons subject to military law," and so long as this Act is in force the soldier becomes liable to certain special military duties, without being exempt from performing his ordinary duties as a citizen.

§ 146. **The Regular Forces.**—The military forces of the Crown consist of the regular army, including the reserves,

and certain auxiliary forces known as militia, yeomanry, and volunteers.

The reserves are composed of soldiers who have served part of their term and have been allowed to retire, subject to an obligation to serve for the remainder of the term in case of necessity. Indian forces and such colonial forces as are raised and paid for by the Imperial Government are included in the regulars; so also are the Royal marines, who are soldiers having military duties to perform on board ship.

§ 147. **The Militia** in its existing form is the representative of the old Saxon "fyrd" or general levy of the men of each county for military service within the realm. Even at the present day a citizen is in theory liable to be chosen by ballot for service in the militia; but the ballot has for many years been suspended by statute, though at any moment it could be put in force again by an Order in Council of the Crown. In practice the militia is now raised by voluntary enlistment.

Militiamen may be called upon to serve for the defence of the country in case of grave national danger, but they cannot be sent out of the United Kingdom, except with their own consent.[1] They are required to undergo a preliminary training, not exceeding six months, upon enlistment, and they are in addition liable to an annual training for a period of about a month. During training they are paid.

The officers of the militia are always subject to military law. The men are subject thereto during training, during embodiment (*i.e.* when in case of grave national danger they are made part of the regular army), and when serving with the regular forces.

[1] There is, however, a "special service section" of the militia which, under the terms of enlistment, is liable for foreign service during a period of twelve months from enlistment.

§ 148. **The Yeomanry** is a body of cavalry, recruited by voluntary enlistment. Its members are liable to be called out for service in any part of Great Britain to repel invasion or to suppress riots. They are annually required to undergo eight days' training, during which time each man receives an allowance of seven shillings a day.

The yeomanry are subject to military law when upon actual military service, during training, and when called out to suppress a riot.

§ 149. **The Volunteers** consist of Engineers, Artillery, Infantry, and a Medical Corps, the Infantry forming the bulk of the force. All these corps are recruited by voluntary enlistment.

Volunteers are required to train for a certain time in each year before they will be recognised as "efficient." Since the annual Government grant made to each corps depends on the number of efficient men it possesses, care is generally taken by the corps to see that its men become efficient; and nowadays a man is legally liable for any loss to the corps caused by a failure to make himself efficient.

The volunteers are subject to military law when on actual military service, and when training or acting with the regulars; but not when training by themselves. They cannot be called out under arms to aid the civil power in the suppression of riots.

The Navy.

§ 150. **Discipline of the Navy.**—The Navy is regarded as the "senior service." Unlike the Army, its maintenance is not forbidden by Act of Parliament; its discipline is regulated by a permanent Act—the Navy Discipline Act, 1866,—not by an Act passed for the term of a year at a time; while impressment for the Navy is

held to be still lawful if confined to seafaring men. Under this limitation, impressment is apparently still part of the prerogative of the Crown. In practice service in the Navy has long been purely voluntary.

The Navy Discipline Act contains "Articles of War," and therefore sailors may be regarded as in some sort subject to military law, though they are not governed by the Army Act.

§ 151. **The Forces of the Navy** consist of officers, seamen, boys, coastguards, and royal marines. The marines, however, are governed by a special Act, distinct from the Naval Discipline Act.

The ordinary term of service in the Navy is twelve years, at the end of which a man may, at his option, re-engage for a further term of ten years; men thus re-engaging are entitled to a pension at the end of the second period.

There is a Royal Fleet Reserve, formed in 1901. This consists mainly of men who have quitted the Navy after their first term of twelve years; though provision is also made for the training of pensioners, who even before 1901 were liable to be called upon for service in emergency. There is also a Royal Naval Reserve, recruited from the officers and men of the mercantile marine and from men engaged in deep-sea fishing. In case of need the Reserve can be called into active service.

§ 152. **Training of Naval Forces.**—Boys intended for service in the Navy receive their instruction partly in training-ships and partly in naval barracks on shore; at a certain age they are drafted off for service. Cadets, who are preparing for the career of officers, are trained in the Royal Naval Colleges.

§ 153. **The Ships of the Navy** consist of battle-ships, which are the largest and most powerfully armed vessels;

armoured cruisers and "protected" cruisers, in which, in consequence of the duties they have to perform, speed is of paramount importance; torpedo craft;[1] and submarines or "submersibles," which also are armed with torpedo tubes. In total tonnage the battle-ships exceed every other class, although the torpedo craft are the most numerous.

A number of passenger steamships belonging to the great lines are, on payment of an annual subsidy, held at the disposal of the Admiralty. In time of war these might be armed and used for certain services connected with the regular fleet. Finally there are a number of steamships permanently maintained to serve in the transport of troops when necessary.

[1] These consist of "torpedo-boat destroyers," "torpedo boats," and "torpedo vessels." These are all armed with torpedo tubes and a few light machine guns. Torpedo-boat destroyers are the fastest vessels afloat.

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